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MAY MEETING.

THE stated meeting was held on Thursday, the 10th instant, at three o'clock, P. M. In the absence of the PRESIDENT and both Vice-Presidents, Mr. ARTHUR LORD was chosen to preside.

The record of the last meeting was read and approved; and the Librarian read the list of donors to the Library during the last month.

The Cabinet-Keeper reported the following gifts and deposit:

From William Bradford Homer Dowse, a lithograph of Baron Richard Dowse, 1824-1890, "An Irish wit and Solicitor-General," published in *Vanity Fair*; also a photograph of a tablet in the chancel of St. Mary's Church, Broughton, England, giving the burial inscription of Sir Thomas Dowse, Esq., and Blanch Covert, erected in 1625 by Edmond Dowse, their son.

From Mr. Norcross, a photograph of the last horse-car in Boston, taken on Dartmouth Street, near the Old South Church.

From Daniel Bradford Badger, of Winchester, a medal of the Master Builders Association, incorporated in 1885, given to charter-members December 30, 1916.

From Dr. Green, a bronze medal struck to commemorate the 150th Anniversary of Hollis Hall, Cambridge, 1913.

A lock of Washington's hair given by Mrs. Washington to Mrs. R. C. Derby and by her presented on her deathbed to Dr. J. C. Warren, December, 1832. This is set in a silver case, and was bequeathed by Dr. Warren to Thomas Dwight in 1856. It is now deposited with the Society by the widow of Mr. Dwight's son, the late Dr. Thomas Dwight.

The Corresponding Secretary reported the receipt of a letter from Lawrence Park, of Groton, accepting his election as a Resident Member of the Society.

The Editor reported the following gifts:

From Lincoln N. Kinnicutt, an "accout of what Freeman Taber lost on the 5th of September, 1778, by the British Troops" at Bristol. It also contains a list of losses by Dorothy Taber, his mother.

From William Bradford Homer Dowse a transcript of the deed executed by Thomas Dowse of Broughton, April 24, 1601, endowing there a school, which is still in existence. The donor of the Dowse library in this Society was a direct descendant of that Thomas Dowse. With this record are an account of the Dowse family and charts of connected families.

John Adams Aiken, of Greenfield, was elected a Resident Member of the Society.

Announcement was made of the appointment of the following Committees:

House Committee: GRENVILLE H. NORCROSS, J. COLLINS WARREN, and WORTHINGTON C. FORD.

Finance Committee: WINSLOW WARREN, GRENVILLE H. NORCROSS, and CHARLES P. GREENOUGH.

Committee to publish the *Proceedings*: HENRY CABOT LODGE, JAMES FORD RHODES, and EDWARD STANWOOD.

It was voted that the income of the Massachusetts Historical Trust Fund for the financial year be retained in the treasury, to be expended in such objects as may seem desirable to the Council of the Society.

Mr. WENDELL presented and introduced Commandant Paul Azan, head of the French Military Mission detailed for instruction at Harvard University, a great-grandson of Commandant Azam, who was an officer in Rochambeau's army at Yorktown, and suffered disabilities and wounds contracted in that service. In the course of his remarks a certificate of his ancestor's service was shown, signed by officers of the French revolutionary army, testifying to his republicanism and general good service, and specifying that his wounds were received in America. Mr. LORD in behalf of the Society welcomed the Commandant, who addressed the Society in French.

Colonel THOMAS L. LIVERMORE completed the reading of his paper on

McCLELLAN.¹

This review of General McClellan's conduct as a commander in the Civil War is written in the light of contemporaneous record evidence, some of which was published later than most of the works on the same subject, and some of which, for this or other reason, has not been given its true weight or significance.

In reaching conclusions the attempt is to pay due regard to McClellan's memoirs and letters which were published after his death in 1885 under the title *McClellan's Own Story*.

I.

APRIL-DECEMBER, 1861.

McClellan was appointed by the Governor of Ohio from civil life, April 23, 1861, major general in command of the Ohio troops called by the President for the suppression of the rebellion.

Four days later, McClellan in a letter to General Scott, commander-in-chief, asked leave to lay before him² "a plan of operations intended," he said, "to relieve the pressure upon Washington and tending to bring the war to a speedy close."

This plan, imparted, as it was, voluntarily and without any of the reserve which later may have been imposed upon McClellan by the responsibilities of high command, the distrust of unfriendly influence, real or fancied, or his own political ambitions, deserves attention in its disclosure of the author's

¹ Abbreviations used:

W. R. = *War of the Rebellion, Official Records, Union and Confederate Armies*, cited by serial numbers.

B. L. = *Battles and Leaders of the Civil War*. New York, The Century Company.

Civil War = *History of the Civil War in America*, by the Comte de Paris. English translation, Philadelphia, Porter & Coates.

C. W. = *Report of the Joint Committee on the Conduct of the War*, 37th Congress, 3d Session. Government Printing Office, 1863.

Own Story = *McClellan's Own Story*, 1887.

Swinton = *Campaigns of the Army of the Potomac*. By William Swinton.

Ropes = *The Story of the Civil War*. By John C. Ropes.

² 107 *W. R.*, 338.

imagination of strategic movements and results, bold and broad, but neglectful of practical limitations. The influence of this vein of imagination appears in some of his plans as commander-in-chief.

This letter of April 27 disclosed his plan as follows:

The region north of the Ohio and between the Mississippi and the Alleghanies forms one grand strategic field, in which all the operations must be under the control of one head, whether acting offensively or on the defensive. I assume it as the final result that hostilities will break out on the line of the Ohio. For two reasons it is necessary to delay this result by all political means, for a certain time; First, to enable the Northwest to make the requisite preparations, now very incomplete; second, that a strong diversion may be made in aid of the defence of Washington and the eastern line of operations.

Then, after proposing to distribute at Cairo and along the Ohio River 16,000 men, to be raised in the Northwest with 80,000 more for an army of active operations, he continued:

With the army of active operations it is proposed to cross the Ohio at or in the vicinity of Gallipolis and move up the valley of the Great Kanawha on Richmond. . . . The movement on Richmond should be conducted with the utmost promptness, and could not fail to relieve Washington as well as to secure the destruction of the Southern army if aided by a decided advance on the eastern line. . . . Another plan would be, in the event of Kentucky assuming a hostile position, to cross the Ohio at Cincinnati or Louisville, with 80,000 men, march straight on Nashville, and thence act according to circumstances. Were a battle gained before reaching Nashville, so that the strength of Kentucky and Tennessee were thoroughly broken, a movement on Montgomery, aided by a vigorous movement on the eastern line towards Charleston and Augusta, should not be delayed. The ulterior movement of the combined armies might be on Pensacola, Mobile and New Orleans.

His proposal here to draw an army from the Northwest for a march of three hundred miles or more upon Richmond, entirely disregarded the fact that from 7,000,000 people east of the Alleghanies an army as great as that he proposed could be assembled and armed quite as quickly, within three days of Washington by rail and water, as against the month or

more that would inevitably be consumed by a march from the Ohio to Richmond, even if unopposed and undelayed by bad weather and bad roads.

The project was fanciful, and must have found its attractiveness in the dramatic aspect of a rush from the West to save the nation's capital.

The proposed march from Tennessee to Montgomery would have lain through Alabama in a region of few roads and no navigable rivers and without a railway within a hundred miles on either side, to reach a city of 10,000 people, important only as the temporary seat of the Confederate government. McClellan must have been moved to propose it by the dramatic aspect of seizing a capital, or by the importance of it in classic precedent no longer applicable to a provincial city of no political or strategic importance.

It was a grave defect of the plan in practical detail to omit the use of the railways. By deflecting the march eastward to Chattanooga or Stevenson, the railway thence to Atlanta, and by deflecting it to Corinth, the railway thence to Mobile, would have been made available. Both these railways connected with others to all the objective points of the plan. As it was possible that before the proposed march to Montgomery should begin, a new Confederate army might assemble in Mississippi or Georgia, the plan exhibited the tendency to regard places rather than the enemy's armies as the objectives of campaigns, which appeared in other plans of McClellan's afterwards. McClellan wrote in his *Own Story* (p. 43) that in the letter under discussion or another to headquarters at about the same time he had suggested "a movement upon Nashville and thence, in combination with the Eastern army, upon Chattanooga, Atlanta, Montgomery, Savannah, etc., etc." The record ¹ proves that this was an error of memory. The letters mention only Montgomery. Atlanta was not then of visible importance. It became so, long afterwards, when it was taken by the Confederates as a base of operations. After their loss of Memphis in June, 1862, the Confederates operated in Middle Tennessee and Kentucky from bases in Mississippi, and it was not until Bragg, in July, 1862, moved his army from that State by rail via Mobile, to Chattanooga, that Atlanta appeared as

¹ 107 W. R., 333 and later pages.

a possible base in the future.¹ Neither part of McClellan's plan was adopted.

Scott on May 2 commented² on the proposal for moving to Nashville and beyond, as follows: "The General eschews water transportation by the Ohio and Mississippi in favor of long, tedious, and breakdown (of men, horses and wagons) marches. His plan is to subdue the seceded States by piecemeal, instead of enveloping them all (nearly) at once, by a cordon of posts on the Mississippi from its junction with the Ohio and by blockading ships of war on the seaboard." And on the next day he wrote³ to McClellan:

It is the design of the Government to raise 25,000 additional regular troops, and 60,000 volunteers for three years. . . . We greatly rely on the sure co-operation of a complete blockade of the Atlantic and Gulf ports, soon to commence. In connection with such a blockade we propose a powerful movement down the Mississippi to the ocean, with a cordon of posts at proper points, and the capture of Forts Jackson and Saint Phillip; the object being to clear out and keep open this great line of communication in connection with the strict blockade of the seaboard, so as to envelop the insurgent States and bring them to terms with less bloodshed than by any other plan. . . . This army, in which you may be invited to take an important part, should be composed of our best regulars for the advance, and of three years' volunteers, all well officered, and with four months and a half of instruction in camps prior to (say) November 10.

The events of the four years following this letter proved the breadth and soundness of its strategy, embracing, as it did, the coast blockade and the control of the Mississippi, which with the contest in Virginia and that south of the Ohio for the possession of the States between the Alleghanies and the Mississippi River, were destined to be the four great operations of the Union forces decisive of the war. Partisan or amateur critics named Scott's plan "the Anaconda," in ridicule, as if its aim was to crush the Confederacy by constriction of, or from, its cordon of posts, against Scott's explicit statement that

¹ 10 *W. R.*, 385; 11 *W. R.*, 297; 22 *W. R.*, 1093; 23 *W. R.*, 731, 740, 749, 763, 784; 30 *W. R.*, 423, 432; 128 *W. R.*, 379, 380.

² 107 *W. R.*, 339.

³ *Ib.*, 369.

the movement down the Mississippi was to "clear out and keep open this great line of communication," as well as to envelop nearly all the Confederacy by the cordon and blockade, whose purpose obviously was to cut off supplies coming from the region east of the Mississippi as well as foreign countries. The opening of the Mississippi was delayed, and from time to time interrupted, by the vigorous Confederate aggression in Kentucky, Tennessee and Mississippi, and defence of the river. It was effected from the Gulf to Baton Rouge in April, and from Cairo to Memphis in June, 1862. It was completed by the capture of Port Hudson and Vicksburg in July, 1863. From posts thus established on the river expeditions went far into the Confederacy, east and west; under Pope from Fort Pillow in May, 1862, to join Halleck's army at Corinth; under Grant from Vicksburg in November, 1863, to relieve Rosecrans' army beleaguered at Chattanooga; under Banks in June, 1864, up the Red River; and under Canby in March, 1865, from New Orleans to Mobile.

On May 13 McClellan was assigned to the command of the Department of Ohio, which included Western Virginia. Into this latter region McClellan, on Scott's prompting,¹ sent a force to aid the Unionists there. A portion of this force, under General Morris, on June 3 surprised and routed 800 Confederates at Philippi.² Arriving in Western Virginia on June 21, McClellan despatched J. D. Cox³ with five regiments up the Great Kanawha valley, there to "remain on the defensive and endeavor to keep the rebels [3500, under Wise] near Charleston," until he (McClellan) could cut off their retreat by movement from Beverly (150 miles north). At the same time, sending 2300 forward from Philippi to confront and watch Garnett's command of 4345 posted in the pass over Laurel Mountain, he moved with a column numbering 6700 or more to the base of Rich Mountain (which extended southward from Laurel Moun-

¹ 2 *W. R.*, 642, 648. Scott's despatch of May 24, here cited, shows the error of Swinton's assumption (p. 35) that McClellan acted "without instructions from Washington." Subsequent despatches in the same volume disprove Swinton's statement that the campaign was undertaken by McClellan "of his own motion" and "without countenance from Washington." See pp. 642, 194, 195, 199, 200-211.

² *Ib.*, 65, 67.

³ *Ib.*, 197, 200.

tain), and there halted about two miles from a force of 1300 under Pegram, found to be intrenched in the defile of the latter mountain.¹ He sent Rosecrans with 1900 men, on July 11, up Rich Mountain to pass around the flank of Pegram's force and attack it in rear, and held the rest of his command "to assault in front as soon as Rosecrans' musketry should indicate that he was immediately in their rear." Rosecrans' attack dislodged the enemy so that they retreated northward that night, leaving upwards of 219 killed, wounded and prisoners.² McClellan wrote of this battle in his report:³ "I moved up all my available force to the front and remained in person just in rear of the advance pickets ready to assault when the indicated moment should arrive." Cox wrote:⁴ "The noise of the engagement had been heard in McClellan's camp, and he formed his troops for attack; but the long continuance of the cannonade and some signs of exultation in Pegram's camp seem to have made him think Rosecrans had been repulsed. The failure to attack according to the plan has never been explained." It indicated either "the precise, methodical mind," which the Comte de Paris attributed to McClellan, or the indecision which less friendly writers allege to have been one of his characteristics.

Garnett immediately retreated northward, and in so doing lost his life at Carrick's Ford on July 13. On the same day Pegram, failing in the attempt to join Garnett, surrendered to McClellan with 593 of his force.⁵

McClellan's wisdom in selecting the point of attack was proved by his attaining the road between Garnett and Wise, and thus forcing the former's force to cross the Alleghanies to the east and preventing the joining of the two forces.

In a measure this palliated the exaggeration of McClellan's despatch of July 14 to the War Department, "We have annihilated the enemy in Western Virginia," qualified by his later message of the same day,⁶ "I expect every day to hear that the

¹ 2 *W. R.*, 200, 208, 209, 237, 255, 292, 268. Strength of Union regiments reckoned at average, shown at p. 215; possibly too small. See 1 *B. L.*, 130.

² 2 *W. R.*, 205, 206, 215.

³ *Ib.*, 206.

⁴ 1 *B. L.*, 132.

⁵ 2 *W. R.*, 266, 208.

⁶ *Ib.*, 204, 205.

measures taken to drive Wise out of the Kanawha have proved successful," although he must have referred to measures contemplated but never taken as his instruction to Cox to remain on the defensive remained unchanged.¹ Two days later he announced to his small army,² "You have annihilated two armies." Doubtless, to this exaggeration and the novelty of victory as well as the political importance of holding Western Virginia, was due the acclaim which followed, greatly disproportionate to the numbers engaged and the losses inflicted upon the enemy. In the crisis following the defeat at Bull Run, July 21, this acclaim of McClellan had its part with his reputation for military learning and mental powers, in confirming the government's previous inclination to employ him in high command. He was called to Washington on July 22 and on his arrival was appointed to the command of the army there.³ If all the facts of the battle of Rich Mountain had been known to the government, there might have been further search for a born leader of armies.

McClellan assumed command at Washington on July 27. The duty of ret tempering the army defeated at Bull Run, and posting it to resist any advance of the enemy from that field on the national capital, soon gave place to that of disbanding the three months' volunteers, of which it largely consisted, as their terms of service ended, and of organizing a new army of the three years' volunteers who were rapidly arriving at Washington. The Comte de Paris, who joined McClellan's staff in September, from a long and intimate acquaintance in that service, writes of him:⁴ "His laborious character, his precise, methodical mind, and his vast military knowledge peculiarly fitted him for the ungrateful and difficult task which had fallen to his lot. He was the creator of the Army of the Potomac." None of his critics denies that during the first four months of his command he successfully performed a great work in organizing, training and equipping that army.

The Confederate army under Johnston after its victory at Bull Run, taking position between that field and Washington, soon extended its line to the Potomac below that city and began to hinder navigation by artillery fire from the right bank. The

¹ 1 B. L., 140.

² 2 W. R., 236.

³ *Ib.*, 753, 763.

⁴ 1 *Civil War*, 259-260.

attitude of this army in barring the way through Virginia and the establishment of the seat of the Confederate government at Richmond clearly indicated that Virginia was to rank with the Mississippi and the seacoast as a field of operations. It early took pre-eminent rank in McClellan's estimation, as appears in a plan of August 2,¹ for the conduct of the war, which he wrote on request of the President, made no doubt with a view to the appointment of a commander-in-chief in succession to Scott, whose physical infirmities were heavy.

In this plan is found a key to much in McClellan's conduct which was not consistent with sound strategy. It opens with the following passage:

The object of the present war differs from those in which nations are engaged, mainly in this: that the purpose of ordinary war is to conquer a peace, and make a treaty on advantageous terms. In this contest it has become necessary to crush a population sufficiently numerous, intelligent and warlike to constitute a nation. We have not only to defeat their armed and organized forces in the field, but to display such an overwhelming strength as will convince all our antagonists, especially those of the governing, aristocratic class, of the utter impossibility of resistance. Our late reverses make this course imperative. Had we been successful in the recent battle (Manassas) it is possible that we might have been spared the labor and expenses of a great effort.

Now we have no alternative. Their success will enable the political leaders of the rebels to convince the mass of their people that we are inferior to them in force and courage, and to command all their resources. The contest began with a class; now it is with a people. Our military success alone can restore the former issue.

By thoroughly defeating their armies, taking their strong places, and pursuing a rigidly protective policy as to private property and unarmed persons, and a lenient course as to private soldiers, we may well hope for a permanent restoration of a peaceful union. But in the first instance the authority of the government must be supported by overwhelming physical force.

Neither the antithesis here drawn by McClellan between the war in hand and ordinary wars nor its bearing is quite clear, but the meaning of what follows is deduced to be that the

¹ 5 W. R., 6. The plan was erroneously dated August 4. See p. 101 of *McClellan's Own Story*.

Union armies first sent forward against the enemy should be not only of strength sufficient to defeat thoroughly the Confederate armies then in the field, but also of such additional strength as should be necessary to convince the Southern people by its display that further resistance would be hopeless, and thus persuade them to peace and Union.

In this project for abridging the war by persuasion first appeared the hope of filling the rôle of peacemaker which afterwards enfeebled McClellan's resolution, or retarded his action against the enemy.

Coming to specific measures, the memorandum continues: "The rebels have chosen Virginia as their battlefield, and it seems proper for us to make the first great struggle there." The assumption that they had chosen no other field was not warranted, for as against 30,000¹ Confederate troops in Virginia, there were, to say nothing of their force in Missouri, about 26,000² in Tennessee — the nucleus of the formidable army which fought for Kentucky and the States south of it for more than three years. In this illusion McClellan proceeded in the memorandum to recommend an army of 273,000 for Virginia, and 68,000 in other fields, besides the local troops of Kentucky, Tennessee and Western Virginia for those States, respectively, and such troops as should be fixed for the Mississippi River expedition by the President and its commander.

With the main army he proposed, "not only to drive the enemy out of Virginia and occupy Richmond, but to occupy Charleston, Savannah, Montgomery, Pensacola, Mobile and New Orleans," operating also along the seacoast with a detachment, in a flotilla, to divert troops from the main Confederate army, and occupy posts seeming desirable.

The only other operations specified were the occupation of Eastern Tennessee in aid of the Unionists there, already planned by the government, and seizing the railroads there to prevent the Confederates from carrying over them re-enforcements from the Mississippi valley to Virginia,³ which they never in-

¹ 5 *W. R.*, 824, 884.

² 4 *W. R.*, 362, 363, 365, 372, 377.

³ In September or early in October the President wrote his wish that the Virginia and Tennessee Railroad should be seized and held, and that troops raised west of the Alleghanies should be used there, and those raised east of the Alleghanies should be appropriated to McClellan and the coast. 109 *W. R.*, 192.

tended. There was no hint of a contest between the Alleghanies and the Mississippi River.

McClellan in his *Own Story* (p. 105), written twenty years after the memorandum, said of the latter:

I still hold to the soundness of the views it expressed. Had the measures recommended been carried into effect the war would have been closed in less than one half the time, and with infinite saving of blood and treasure. So far as I know, it was the first general plan of operations proposed upon a scale adequate to the case. It recognized the importance of railways as a new element in strategy; it emphasized the vital importance of the railway system leading from Memphis to the East; it marked out the advantages to be derived from coast expeditions; it stated the part to be played upon the Mississippi; it foreshadowed the marches upon Atlanta and the seaboard; it called for a force which the future proved to be fully within our means, and which would have crushed the rebellion in one or two campaigns.

In a later passage he wrote,¹ of the time when he succeeded Scott as commander-in-chief: "I supposed that some general plan of operations existed, but now learned that there were none such." In these passages he ignored Scott's letter to himself of May 3, which had imparted the plans for moving down the Mississippi and for the naval blockade, as well as preparations already made for the contest in Virginia. By no obvious reasoning can the plan of the memorandum to move the main army through Virginia, and thence, whether by land or sea, to Charleston and the cities south and southwest of it, be held to have foreshadowed the march to Atlanta upon the expulsion of the Confederates from Tennessee, and their consequent retreat upon that city. Not until long after the memorandum was written did McClellan see that the Confederate invasion of Kentucky was the beginning of a resolute effort to possess that State, and it was later yet, in the struggle for the Mississippi valley east of the river that the importance of Atlanta appeared.

Before the date of the memorandum Johnston had demonstrated the strategic use of railways in bringing his troops to the field of Bull Run in time to turn defeat into victory there.

The army called for by McClellan would not have sufficed

to crush the Confederate armies beyond Virginia. An army large enough for all fields raised in 1861 would have shortened the war if fortune had revealed soon enough a commander able to direct it; but the end must have been delayed as long as the Confederates enlarged their armies proportionately, and if the field west of the Alleghanies in 1861 had been robbed of its troops to re-enforce the Union army in Virginia, as McClellan recommended, the Confederates would have got a footing in Kentucky and Tennessee of serious peril to the Union.

The Confederates on the lower Potomac intrenched their artillery at points on the right bank for five miles down from Freestone Point. The fire of this artillery, though inflicting little damage, so much increased the menace to passing vessels that by the end of October regular voyages to Washington had ceased.¹

Although railway communication was adequate, yet obstruction of the approach to the capital by the Potomac was much resented by the people, and the government was impatient to have the army end it. But McClellan judged it inexpedient to move any part of his army against the batteries on the river, because he thought it would bring on a general engagement for which his army was not yet fit.² His judgment on the latter point was sustained by later experience, which proved that six months' service was necessary to fit volunteers for battle.³

The President's anxiety for early action by the army led him at last to request of McClellan a paper "upon the condition of his forces and the immediate measures to be taken to increase their efficiency." McClellan complied, near the latter part of October, with a letter,⁴ in which, premising "So much time has passed and the winter is approaching so rapidly that but two courses are left to the government, viz., either to go into winter quarters, or to assume the offensive with forces greatly inferior in numbers to the army I regarded as

¹ 5 *W. R.*, 557, 625, 634, 645, 648, 652, 663, 801, 963; 5 *Navy War Records*.

² 5 *W. R.*, 9, 47, 608.

³ See list of regiments, *Ib.*, 15 *et seq.*; and Dyer's *Compendium*, 1006 *et seq.*

⁴ 5 *W. R.*, 9. A letter of November in his *Own Story* (p. 176) may prove that it was not finished in October.

desirable and necessary," he reiterated his estimate of the paramount importance of the field in Virginia in stating his regret "that it has not been deemed expedient, or perhaps possible, to concentrate the forces of the nation in this vicinity (remaining on the defensive elsewhere), keeping the attention and efforts of the government fixed upon this as the vital point"; recommending the transfer from other armies of "the superfluous strength not required for the purpose in view, and, thus re-enforcing this main army, whose destiny it is to decide the controversy," to enable it "to move with a reasonable prospect of success before the winter is fairly upon us," and expressing his feeling "that the Army of the Potomac holds the fate of the country in its hands." He then stated 150,000 as the number which "spies, prisoners, etc.," give to the enemy on the Potomac,¹ and continued: "It is plain, therefore, that to insure success, or to render it reasonably certain, the active army should not number less than 150,000 efficient troops, with 400 guns, unless some material change occurs in front of us," and stated that of his "present for duty," after deducting the troops at Baltimore, Annapolis and guarding the Potomac, and those partly equipped and armed, there remained only 76,285 disposable for an advance, and recommended that the surplus troops should be brought from other armies,² that the organization of new regiments and batteries be hastened, that regular troops be sent to him, and "that no further outside expeditions be attempted until we have fought the great battle in front of us," and expressed the opinion that "a vigorous employment of all these means" would enable his army successfully to assume the offensive operations he had desired "to prepare for and prosecute," and that "the advance should not be postponed beyond the 25th of November if possible to avoid it." The government did not fall in with the proposal to re-enforce the Army of the Potomac at the expense of the Western armies,³ but, probably encouraged by McClellan's intimation that he believed that numbers equal to Johnston's would insure or make reasonably certain the suc-

¹ 5 *W. R.*, 9. In fact they had 47,550 on October 15. *Ib.*, 932, 933. See also *Ib.*, 588; 14 *W. R.*, 3.

² The President directed, October 31, that only troops from east of the Alleghanies should be appropriated to McClellan. 109 *W. R.*, 192.

³ 102 *W. R.*, 192.

cess of the Army of the Potomac in an advance against the former, and by his declaration that it ought to advance for battle within the next month, appointed him, on November 1,¹ to succeed Scott in command of all the armies, in assuming which McClellan retained to himself the immediate command of the Army of the Potomac.

It is not surprising to find that, believing that Virginia was to be the field of battle paramount to all others, McClellan, on assuming his larger command, instructed Halleck and Buell, in assigning them to command in Missouri and Kentucky respectively, that he required no offensive movement except the advance of the latter's force to occupy Western Tennessee and its railroads.²

There is ample evidence in the records that the three generals were much occupied to the end of December, each in the necessary work of organizing, arming, equipping and training the troops under his immediate command.³ But at the end of November there were quite enough well-trained soldiers at or within call of Washington to dislodge the enemy from the lower Potomac, and, if skilfully and boldly handled, to have beaten Johnston's army if it had thus been drawn into general battle, or if by a resolute advance its extended line had been turned or flanked.

Johnston, then, had less than 50,000 men, and they were distributed on a line of 50 miles from Leesburg on the north, to the lower Potomac on the south, the main body being within 15 miles of McClellan's line.⁴ McClellan had 140,000 men available for an advance from Washington, and among them 54,000 in 74 regiments⁵ whose six months' training had well fitted them for close engagement. If the whole force had been deployed, and the 74 regiments had gone forward swiftly, it is highly improbable that in that event Johnston would have hazarded any part of his army across the upper Potomac to advance towards Baltimore or Washington, as McClellan had feared.⁶

¹ 5 *W. R.*, 35.

² *Ib.*, 37, 38.

³ *Ib.*, 12, 35; 7 *W. R.*, 419, 437, 443, 457, 482; 8 *W. R.*, 382, 389, 408, 419, 437, 457, 482.

⁴ 5 *W. R.*, 974, 985, 626, 678; *W. R. Atlas*, Plates I-VII, 89-1.

⁵ 5 *W. R.*, 10, 12, 15, 19; *Dyer's Compendium*, 1006 *et seq.*

⁶ 5 *W. R.*, 588, 589.

But it appears that McClellan had determined to long postpone any offensive movement from Washington. On November 29 he wrote Buell:¹ "Inform me some little time before you move so that we may move simultaneously. I have also other heavy blows to strike at the same time. I doubt whether all the movements can be arranged so that the grand blows shall be struck in less than a month or six weeks from the present time. Should I be delayed, I will not ask you to wait for me."²

The only other operation then in preparation by McClellan was that of Burnside's division, then designated for the descent on the coast of North Carolina, for which it sailed on January 9, 1862, numbering 12,000 men.³

It was expected that Burnside's seizure of ports and railways would interrupt supplies and men for Virginia, and incidentally divert troops from the Confederate army there; but it is not credible that McClellan intended to delay movement of the Army of the Potomac for blows which Burnside's 12,000 men could deliver.

McClellan wrote in his *Own Story*, p. 199:

It certainly was not until late in Nov. 1861, that the Army of the Potomac was in any condition to move, nor even then were they capable of assaulting intrenched positions. By that time the roads had ceased to be practicable for the movement of armies, and the experience of subsequent years proved that no large operations could be advantageously conducted in that region during the winter season. Any success gained at that time in front of Washington could not have been followed up, and a victory would have given us the barren possession of the field of battle with a longer and more difficult line of supply during the rest of the winter. If the Army of the Potomac had been in condition to move before winter, such an operation would not have accorded with the general plan I had determined upon after succeeding General Scott as general-in-chief of the army (p. 202). . . . I determined to expedite the preparations of the Western armies as much as possible during the winter, and, as early as practicable, in the spring throw them forward;

¹ 7 *W. R.*, 457.

² *Ib.*, 458. Apparently reference here is to a movement on Nashville which Buell had proposed. McClellan in this letter wrote of protecting the Union men of Eastern Tennessee, "First secure that" and afterwards urged immediate movement there. See *Ib.*, 451, 468, 473, 926.

³ 5 *W. R.*, 35, 36; 9 *W. R.*, 355, 356; 36 *W. R.*, 333, 334.

commencing their advance so much earlier than that of the Army of the Potomac as to engage all the Confederate Western forces on their own ground, and thus prevent them from reinforcing their army in front of Richmond. As early as the beginning of December, 1861, I had determined not to follow the line of operations leading by land from Washington to Richmond, but to conduct a sufficient force by water to Urbana [on the Rappahannock], and thence by a rapid march to West Point, hoping thus to cut off the garrison of Yorktown, and all the Confederates in the Peninsula; then, using the James River as a line of supply, to move the entire Army of the Potomac across that river to the rear of Richmond.

In pursuance of this plan I did not propose disturbing the Confederate forces at Manassas and Centreville, but, while steadily pushing forward the fortifications of Washington, and the instruction and organization of the Army of the Potomac, I desired to hold them there to the last moment, and especially until the Urbana movement was well in process of execution. . . .

Early in December this plan was so far matured that, finding Secretary Chase seriously troubled in his financial operations by the uncertainty as to military operations, I went one day to his private office in the Treasury building and of my own volition, confidentially laid my plans before him.

On or about December first, Chief Engineer Barnard made for McClellan a memorandum of a plan for shifting the theatre of operations by transporting the Army of the Potomac by water from Annapolis and Port Tobacco on the Potomac to Urbana, doubtless with a view to the new line of operations McClellan was then considering.¹

It was not necessary to assault intrenchments in bringing Johnston to battle in rear of the line held by his army in December. A plan had been outlined in October by Heintzelman² for threatening the line north of Bull Run with a part of the Union force lying south of the Potomac, and at the same time advancing the left of that force to the Occoquan River to join a force crossing the lower Potomac and landing below the Occoquan, and, with it, advancing up the south side of that stream to seize the railroad near Brentsville. The President, probably knowing of this plan, and doubtless stirred by the passing of November 25 without the advance against Johnston, the hope of which had been raised by McClellan's October

¹ 5 *W. R.*, 671.

² *Ib.*, 622.

letter, left with him about December 1 a memorandum suggesting substantially the same plan, with these questions, "Without waiting further increase of numbers or better drill and discipline, how long would it require to actually get in motion, and how many troops could join in the movement?"

McClellan replied ¹ on December 10, to the first question, if bridge trains ready, by December 15, probably 25; and to the second, 71,000 from south, and 33,000 from north of the Potomac, and added: "Information recently received leads me to believe that the enemy could meet us in front with equal forces nearly, and I have now my mind actively turned toward another plan of campaign, that I do not think at all anticipated by the enemy, nor by many of our own people." ²

There is no reason to doubt that he here referred to the plan above mentioned for moving by Urbana. The reason given by McClellan for delaying the movement of the Army of the Potomac for action by the Western armies was not well founded, for the Confederates neither had nor simulated intention to re-enforce their army in Virginia from their Western troops. On the contrary the location and attitude of their army, between the Alleghanies and the Mississippi, indicated the use of it there to occupy and hold that region. In the absence of evidence to sustain McClellan's opinion on this subject, the inference is that he was moved by the preconception stated and restated by him in August and October as above, that the Confederates had determined to make Virginia the field on which the war should be decided.

In his report of August 3, 1863,³ McClellan, writing that it was his intention that the various parts of his plan for the operations of all the armies "should be carried out simultaneously, or nearly so, and in co-operation along the whole line," added: "If this plan was wise, and events have failed to prove that it was not, then it is unnecessary to defend any delay which

¹ 14 *W. R.*, 6.

² *Ib.* McClellan wrote in his letter of October 6 to his wife: "I do not expect to fight a battle near Washington. Probably none will be fought until I advance. . . . I will advance and force the rebels to battle in a field of my own selection." A recent writer argues that this refers to the movement by Urbana, but the evidence above, McClellan's letter of February 3, his *Own Story* (202, 203, 220) and his report (5 *W. R.*, 8, 41, 43, 45) do not admit of this conclusion. See Campbell, *McClellan*, 80.

³ 5 *W. R.*, 41.

would have enabled the Army of the Potomac to perform its share of the whole work," but he did not point out what part of the delay he so referred to, or make mention of bad roads or the condition of the army in December as a reason for delay.

Neither weather unfavorable for a campaign nor bad roads arrived during December. McClellan's memory to the contrary, twenty years later, as above quoted, was at fault. This is proved beyond a doubt by the contemporaneous testimony of half a score of his officers, including his chief engineer and five of his division commanders.¹ The avowal, above quoted, of his decision in the first part of December or earlier to take the Urbana route, and that any movement of the Army of the Potomac before winter arrived would not have accorded with his general plan, rebuts any inference that weather or roads prevented movement in December against Johnston's army where it lay.

It is implied in McClellan's reply to the President of December 10, that, in the belief that Johnston's numbers were equal, or nearly equal, to his own, he was contemplating the movement by Urbana to gain an advantage in position which would compensate for the supposed inadequacy of his numbers. Probably he thought they would not be enlarged to 240,000 assumed in his October letter² to be needed, inasmuch as he had received only 198,000³ of the total 640,000 volunteers, and the Secretary of War had decided to allow the number to fall to 500,000 to conform to the will of Congress as expressed in its appropriation for only the latter number.⁴

During December Johnston's army numbered from 52,000 to 62,000 effectives,⁵ and McClellan's 169,000 to 191,000,⁶ including at least 54,000 fit for battle as above stated.⁷

The President's plan for marching 15 miles, around John-

¹ Generals Heintzelman, Franklin, McDowell, Porter, Blenker, Richardson and Smith, and Colonel Champlin, December 24 to January 6, 1862; General Barnard, February 25, 1862. 1 *C. W.*, 116, 118, 123, 132, 150, 171, 187, 193, 215, 389.

² 5 *W. R.*, 10.

³ *Ib.*, 12; 122 *W. R.*, 699.

⁴ *Ib.*, 699, 700. Congress had authorized 542,034 under the proclamation of May 3 and act of July 22 and 500,000 under act of July 25 to serve "during the war." The report of the Secretary of War seems to treat the latter as ineffective, perhaps because none had enlisted for the term of service it fixed. *Ib.*, 146, 381, 383, 403; 125 *W. R.*, 1264.

⁵ 5 *W. R.*, 974, 1015.

⁶ *Ib.*, 12, 15, 19.

⁷ *Dyer's Compendium*, 1006 et seq.

ston's right flank, to bring him to battle for the railroad, near Brentsville, was sound in strategy.¹ Instead of this McClellan planned a wide movement by land and water, of a hundred miles or more, around that flank for objects of doubtful achievement or vague design. The first object, as disclosed in his *Own Story*, was to cut off Magruder's command on the Peninsula, numbering between 13,000 and 16,000, and stationed on the Warwick River, 25 to 40 miles from West Point, who, during McClellan's day's march from Urbana, could pass beyond that place on the way to Richmond, or cross the James if they chose not to stand in their works at Yorktown.² How McClellan then expected to prevail by crossing the James as his second object is not disclosed, unless he, as proposed in his letter of February 3, 1862³ (as an alternative if he failed in his projects east of the river), intended to thus reach a position "in rear of Richmond, thus forcing the enemy to come out and attack us, for his position would be untenable, with us on the southern bank of the river." But this would have come true only after the capture of the railways needed to supply Richmond, which in 1864 required eight months after Grant crossed the James. Whether McClellan would have effected this in a shorter time in 1862 may be questioned.⁴ The attempt to reach the James would have exposed his army on its march of 40 miles or more from West Point to the hazard and delay of possible attacks on its flank by Johnston, and its crossing of the river probably would have been opposed by forces on its flank and intrenched across its path. It would have been an operation requiring great skill and intelligence in commanders of all ranks and great steadiness in the men.

Without testing Johnston's strength by the common reconnaissance in force, McClellan did not conform to good military practice in refusing to try for victory over Johnston behind Manassas by the President's plan, upon the assumption that Johnston's numbers were nearly equal to his own. It was especially unwise to defer action until under the stigma of suf-

¹ See 1 C. W., 140, 141, 142, 389.

² *Own Story*, 227; 4 W. R., 716; W. R. *Atlas*, Plate xvii.

³ 5 W. R., 45.

⁴ In fact he twice neglected the opportunity to cross the James — in May and July, 1862.

fering hostile obstruction of the approach to the capital, and when there was great need of victory to brace the government and the people for the long struggle ahead.

In thus acting, McClellan's reliance upon a plan so inadequate as his must have rested upon something beyond mere strategic rules.

That he sincerely believed that he had been chosen as the Divine instrument to end the war, and that God was directing all his movements, was the conclusion reached in an article¹ by General James B. Fry, who was a fellow cadet with him at West Point, had served with him in the Mexican war, and on the staff of McDowell,² was in touch with his staff in the period under discussion. Tradition to the same effect lingers among army officers, and passages in his private letters in his *Own Story* clearly indicate the correctness of this theory. That these passages were not written merely in reverent acknowledgment of a Providence ruling over all men is seen in the following extract from an intimate letter of McClellan to Burnside, dated May 21, 1862, which strayed into the official files:³

I pray God's blessing on our arms, and rely far more on his goodness than I do on my own intellect. I sometimes think now that I can almost realize that Mahomet was sincere. When I see the hand of God guarding one so weak as myself, I can almost think myself a chosen instrument to carry out his schemes. Would that a better man had been selected.

It is more than conceivable that a commander, impelled by faith like this might, in disregard of military precept, be led to refuse the chance of present victory by the vision of one in a remote field great enough to realize the dream of ending the war and restoring the Union in peace without further bloodshed.

His adoption of the Urbana plan was a fateful crisis. It marked the beginning of a long series of harmful delays, neglected opportunities, and feeble aggressions, which may be attributed to the influence of mysticism and the dream of the peacemaker.

¹ "McClellan and his Mission," *The Century*, October, 1894.

² 5 *W. R.*, 626.

³ 9 *W. R.*, 392.

II.

DECEMBER, 1861—MARCH, 1862.

In assigning Buell and Halleck, on November 7 and 11 respectively, to the command of the departments of the Ohio and the Missouri, McClellan apportioned to the former all of Kentucky east of the Cumberland River, and to the latter all west of that river. He instructed both to rest on the defensive, excepting his direction to Buell to "throw the mass of your forces by rapid marches, by Cumberland Gap or Walker's Gap, on Knoxville in order to occupy the railroad at that point, and thus enable the loyal citizens of Eastern Tennessee to rise, while you at the same time cut off the railway communication between Eastern Virginia and the Mississippi." ¹

The necessary preparation of their troops delayed aggressive action by these commanders through November and December. The Confederates, advancing northward from Tennessee, by the end of December, about 60,000 strong, were posted, contiguous to Halleck's department in Kentucky, at Columbus on the Mississippi, Fort Henry on the Tennessee, and Fort Donelson and Clarksville on the Cumberland; and in Buell's department at Bowling Green, and Mill Spring up the latter river, facing northward along a line of about three hundred miles. Opposed were Grant's command of about 12,000, in Halleck's department, at Cairo, and Buell's command of 57,000 in Kentucky, facing the enemy, on Green River and thence on a line to the eastward, through Lebanon, Columbia and Somerset.

On November 27 Buell, having assembled troops under Thomas at Lebanon with a view to its convenience as a point of departure for both Eastern Tennessee and Nashville, suggested to McClellan that later circumstances might make a movement on the latter city preferable.² On November 29 McClellan replied, in the letter above cited, directing Buell to secure Eastern Tennessee first, and thereafter he invariably

¹ 5 *W. R.*, 36. The former object had had the attention of the government since the middle of July, 109 *W. R.*, 176, 177, 178, 4 *W. R.*, 252 *et seq.*, and the latter suggested in McClellan's memorandum of August had been adopted by the President in September or October. 5 *W. R.*, 7; 109 *W. R.*, 192.

² 7 *W. R.*, 450.

pressed this.¹ Buell, never losing his preference for the movement on Nashville,² continued the preparation for despatching Thomas's command to suit either plan³ until December 29, when, probably impelled by McClellan's despatch of that date,⁴ he ordered Thomas forward against Zollicoffer, who had crossed from Mill Spring to the north side of the Cumberland on the route from Knoxville.⁵ At that time McClellan was confined to his house by an illness which, although thought to be serious, admitted of his transacting official business daily during its course.⁶

The President, obviously unaware of McClellan's despatch of December 29, telegraphed Halleck two days later: "General McClellan is sick. Are General Buell and yourself in concert? When he moves on Bowling Green what hinders it being reinforced from Columbus? A simultaneous movement by you on Columbus might prevent it"; and the same to Buell.⁷ Both generals replied, on January 1, that no concert had been arranged between them.⁸ This and the ensuing correspondence, although manifesting that neither believed his army was ready for serious action,⁹ resulted, on January 6, in Halleck's telegraphing Grant that he wished him, with troops from Cairo and Paducah, to make a demonstration in force toward Mayfield, Murray and Dover, as if for Nashville, to prevent the despatch of Confederates from Columbus to Bowling Green.¹⁰

In reply to the President's question, "Have any arms gone forward for East Tennessee?" Buell, on January 5, telegraphed that arms could "only go forward under the protection of an army," for the movement of which his "transportation and other preparations" were "still incomplete," and that

¹ 7 *W. R.*, 457, 468, 473, 926, 531, 547.

² *Ib.*, 488, 521, 528, 530, 536, 548.

³ *Ib.*, 487, 511, 512, 520, 521.

⁴ *Ib.*, 926.

⁵ *Ib.*, 78, 797.

⁶ 107 *W. R.*, 515; 5 *W. R.*, 36, 697; 7 *W. R.*, 527, 531; *Own Story*, 155; Swinton, 80.

⁷ 7 *W. R.*, 524. The President's intention was that the movement on Bowling Green should be subordinate to the invasion of Eastern Tennessee. See 7 *W. R.*, 927, 928.

⁸ *Ib.*, 526.

⁹ *Ib.*, 526-528, 530, 532, 533, 535, 540, 543, 547, 548.

¹⁰ *Ib.*, 533.

it was opposed to his judgment "if it should render at all doubtful the success of a movement against the great power of the rebellion in the West . . . mainly arrayed on the line from Columbus to Bowling Green."¹ The President telegraphed in reply, January 6: "Your despatch . . . disappoints and distresses me. I have shown it to General McClellan, who says he will write you today. . . . Of the two, I would rather have a point on the railroad south of Cumberland Gap than Nashville," etc.²

At this date there was no movement by any of the Union armies under way, and, other than the invasion of Eastern Tennessee, McClellan had not announced a plan for any movement. On January 7 his letter of instructions to Burnside³ defined the objects of the movement of his division to North Carolina (which the government had determined to substitute for operations by flotilla in the inlets of Chesapeake Bay and the Potomac), to be the seizure of Roanoke Island, Beaufort and New Berne, with the railroad from Beaufort to Goldsborough and Raleigh, and destruction of the Wilmington and Weldon Railroad passing through that city.

General McClellan having ceased to receive the President, the latter, in great distress from this and the bad state of affairs military and civil, then, on January 10, took counsel with Generals McDowell and Franklin on the possibility of soon commencing operations with the Army of the Potomac, at a conference attended by several members of the cabinet, and again on the 11th, when Secretary Chase disclosed what McClellan had told him of his plan for moving on Richmond by Urbana.⁴ On the same day, Halleck, who on the 10th had telegraphed Buell, "Fix the day when you wish for a demonstration," and had halted Grant, telegraphed the latter, "I can hear nothing from Buell, so fix your own time for the advance."⁵

Thomas, detained by bad roads and lack of wagons, had halted at Columbia. Leaving there on January 11, he reached Logan's Cross Roads, 10 miles from the enemy, on the seventeenth.⁶

On January 12 McClellan heard of the President's confer-

¹ 7 *W. R.*, 530.

² 5 *W. R.*, 36.

³ 7 *W. R.*, 543, 544.

⁴ *Ib.*, 927, 928.

⁵ *Swinton*, 80-82.

⁶ *Ib.*, 926, 550, 79.

ence,¹ and telegraphed Buell, "How are your transportation preparations progressing?" and, receiving his reply, wrote him to hire or if necessary seize sufficient private teams,² and then called on the President, who asked him to attend the conference on the next day, which doing, he there said, in answer to the question what he intended doing with his army and when he intended doing it, that "the movement in Kentucky was to precede any one from this place [Washington], and that that movement might now be *forced*; that he had directed General Buell, if he could not hire wagons for his transportation, he must take them. After another pause he said that he must say he was very unwilling to develop his plans, always believing that in military matters the fewer persons who were knowing to them the better; that he would tell them if ordered to do so. The President then asked him if he counted upon any particular time; he did not ask what that time was, but had he in his own mind any particular time fixed when a movement could be commenced? He replied he had. Then rejoined the President, 'I will adjourn this meeting.'"³

The coincidence of Halleck's release of Grant and the movements in Kentucky with the President's conference suggests the origin of the former in tidings of the latter. The results of the movements were encouraging. The Confederate General Crittenden, on news of Thomas being at Logan's Cross Roads, more enterprising than the latter, who had halted to await some of his troops retarded by heavy roads, ordered his force forward to the attack⁴ on the night of January 18, which, making a march of 10 miles, attacked Thomas where he lay on the morning of the 19th, and, being defeated, fell back across the Cumberland pursued by Thomas. The Confederate loss was 349, including General Zollicoffer, from about 6000; to the Union loss of 194 from about 4000 in eight regiments and a fraction on each side. On the next day the Confederates retreated southward for Tennessee. Buell, in transmitting to McClellan the news of the victory, gave warning that the difficulty of hauling supplies over the heavy roads, was almost insurmountable.⁵

¹ *Own Story*, 155.

² 7 *W. R.*, 546, 547.

³ *Own Story*, 158; *Swinton*, 85.

⁴ 7 *W. R.*, 79-82, 103.

⁵ *Ib.*, 103-108, 76, 79-82, 88, 95, 96-111.

In Grant's reconnaissance from the 13th to the 20th of January the infantry of one column marched 75 miles and his cavalry 140 miles, and the other column from the 21st to the 24th of January marched 40 miles. The accompanying gunboat shelled Fort Henry, and General C. F. Smith from her deck reconnoitred the fort with notable consequences, as related below. These movements so much alarmed the enemy as to induce calls for re-enforcing Columbus, Nashville and Fort Henry.¹

Soon after Stanton's assumption of the office of Secretary of War on January 15,² he urged upon McClellan action to clear the Confederates from the Baltimore and Ohio Railroad and the lower Potomac. McClellan then had correspondence with Banks, Lander and Hooker upon these subjects, but without result.³ On January 27 the President issued his General War Order, No. 1⁴ as follows:

Ordered. That the 22d day of February, 1862, be the day for a general movement of the land and naval forces of the United States against the insurgent forces. That especially the army at and about Fortress Monroe; the Army of the Potomac; the Army of Western Virginia; the army near Munfordville, Kentucky; the army and flotilla at Cairo, and a naval force in the Gulf of Mexico be ready to move on that day.

That other forces, both land and naval, with their respective commanders, obey existing orders for the time, and be ready to obey additional orders when duly given.

That the heads of Departments and especially the Secretaries of War and of the Navy, with all their subordinates of land and naval forces, will severally be held to their strict and full responsibilities for prompt execution of this order.

It perhaps was not by mere coincidence that the President made this effort to overcome the lethargy which then seemed to suspend action in every field except the limited one of Grant's reconnaissance; for on that same day Buell, who on January

¹ 7 *W. R.*, 72-74, 561, 831, 835, 836, 838, 839. It is possible that Confederate troops were detained at these points which otherwise might have re-enforced Zollicoffer, but Crittenden seems to have attacked at Logan's Cross Roads in the belief that this was not needed. 7 *W. R.*, 103, 105, 106, 830, 838. See Grant's *Memoirs*, I. 286.

² 122 *W. R.*, 964; 5 *W. R.*, 41.

³ *Ib.*, 702-711.

⁴ *Ib.*, 41.

22 ¹ had repeated to McClellan Thomas's message — "The rout of the enemy was complete. . . . They then threw away their arms and dispersed through the mountain by-ways in direction of Monticello, but are so completely demoralized that I don't believe they will make a stand short of Tennessee" — which may have well encouraged the President to hope for the immediate invasion of Eastern Tennessee, again telegraphed ² "that with the available transportation and almost impassable condition of the roads" it had "been barely possible" to keep Thomas's force from starving, and that any advance of it was impossible. The President may well have regarded this as the end of all hope for the early occupation of Eastern Tennessee.

The Comte de Paris writes ³ that the President's order above quoted "will ever be regarded as one of the strangest monuments of that epoch," and that it "directs" all the forces "to attack the enemy on the same day." But in terms it directs only that they "*be ready* to move on that day," and in ordering that it "be the day for a general movement," without stating objects, numbers to be employed, routes or manner of advance, obviously it was intended only to fix a time for making the movements planned or to be planned by the commanders of the forces, and to place upon them full responsibility for the failure to plan and to execute their plans by that day. Probably the President intended by this that when necessary this should be the evidence to the nation that the delays which provoked its impatience were not by the will of the government, as well as to warn commanders of the forces that their standing with it would depend upon their efforts to fulfil the expectation expressed in the order.

The criticism that the direction in the second clause of the order, that orders shall be obeyed, is superfluous, ⁴ misses the point that its purpose was merely to supply orders for forces not named in the first clause.

This interpretation of the order as requiring preparation for, rather than execution of, movements was McClellan's inter-

¹ 7 *W. R.*, 76.

² *Ib.*, 568.

³ *Civil War*, I. 609.

⁴ *Ropes*, Part I. 227.

pretation in the following passage of his report of August, 1863,¹ referring to Secretary Stanton:

Very soon after his entrance upon office, I laid before him verbally my design as to the part of the plan of campaign to be executed by the Army of the Potomac, which was to attack Richmond by the lower Chesapeake. He instructed me to develop it to the President, which I did. The result was that the President disapproved of it and by an order of January 31, 1862, substituted one of his own . . . as follows . . .

"Ordered. That all the disposable force of the Army of the Potomac, after providing safely for the defence of Washington, be formed into an expedition for the immediate object of seizing and occupying a point upon the railroad southwestward of what is known as Manassas Junction, all details to be in the discretion of the Commander-in-Chief, and the expedition to move before or on the 22d day of February next." . . .

I asked his excellency whether this order was to be regarded as final, or whether I could be permitted to submit in writing my objections to his plan, and my reasons for preferring my own. Permission was accorded, and I therefore prepared the letter to the Secretary of War which is given below.

Ropes's criticism that the President, in issuing this order, had not "the courage to look in the face the fact that the condition of the roads in Virginia made marching in that region by a large army, for the time being, wholly impracticable,"² seems not to notice that the time set for the movement was at a season several weeks ahead, when impassable roads were not in all years inevitable. In fact, in this very season, McClellan, in fear that the enemy were about to move for attack on his forces on the upper Potomac or in the Shenandoah valley, and with a view to covering the reconstruction of the Baltimore and Ohio Railroad in that region, was arranging, from February 20 to 26, for immediate movement of Banks's and Lander's divisions,³ supported by four others from the Washington defences. Again, nearly half the Army of the Potomac moved from the Petersburg trenches west of Hatcher's Run and there were in severe engagement February 5-7, 1865.⁴

¹ 5 W. R., 41.

² *Ropes*, I. 226.

³ 107 W. R., 534, 536, 540; 5 W. R., 48, 725-727, 728.

⁴ 95 W. R., 149-154, 191, 253.

The project of the President's order for seizing the railroad behind Johnston's line and thus cutting his communication with the Confederate capital and the sources of his supplies (which was the leading feature of the plan proposed by Heintzelman in October and the President in December) was based on sound strategy. It followed the best precedents and was justly considerate of soldierly self-respect in leaving all details to McClellan's discretion.

Continuing his report, McClellan wrote that before the letter prepared by him in support of his plan had been submitted the President addressed him a note dated February 3, in which he wrote, "I shall gladly yield my plan to yours," in return for a satisfactory comparison of the two plans in the matters of time and money, certainty and value of victory, and difficulty of retreat in case of disaster. McClellan's letter, also dated February 3,¹ which he said contained these comparisons, recites at length the history of his command, and other matters which need not be recited for the present comparison of the two plans of campaign. In this letter he wrote:

I have now under my command a well-drilled and reliable army, to which the destinies of the country may be confidently committed. . . .

In the earliest papers I submitted to the President I asked for an effective and movable force far exceeding the aggregate now on the banks of the Potomac. I have not the force I asked for. . . .

I have ever regarded our true policy as being that of fully preparing ourselves, and then seeking for the most decisive results. I do not wish to waste life in useless battles, but prefer to strike at the heart.

Then, turning to the President's plan, he assumed that the enemy would forestall the Union advance, in occupying Brentsville, and consequently prevent its interposition between the enemy and Richmond.

In support of this assumption he continued: "In this latitude the weather will for a considerable period be very uncertain, and a movement commenced in force on roads in tolerably firm condition will be liable, almost certain, to be much delayed by rains and snow. It will therefore be next to im-

¹ 5 *W. R.*, 42.

possible to surprise the enemy or take him at a disadvantage by rapid manœuvres."

He also called attention to "the present unprecedented and impassable condition of the roads" in support of the assertion that "no precise period can be fixed upon for the movement on this line, nor can its duration be closely calculated; it seems certain that many weeks may elapse before it is possible to commence the march."

In closing his comments on this plan he wrote:

Assuming the success of this operation and the defeat of the enemy as certain, the question at once arises as to the importance of the results gained. I think these results would be confined to the possession of the field of battle, the evacuation of the lines of the upper Potomac by the enemy, and the moral effect of the victory — important results, it is true, but not decisive of the war nor securing the destruction of the enemy's main army, for he could fall back on other positions, and fight us again and again, should the condition of his troops permit. . . . If he is in no condition to fight us again out of the range of the intrenchments at Richmond, we would find it a very difficult and tedious matter to follow him up there, for he would destroy his railroad bridges and otherwise impede our progress through a region where the roads are as bad as they well can be, etc.

Of his own plan he wrote as follows:

The lower Chesapeake Bay . . . affords the shortest possible land route to Richmond. . . . The roads in that region are passable at all seasons of the year. The country . . . is much more favorable for offensive operations than that in front of Washington (which is very unfavorable), much more level, more cleared land, the woods less dense, the soil more sandy, and the spring some two or three weeks earlier. A movement in force on that line obliges the enemy to abandon his intrenched position, in order to hasten to cover Richmond and Norfolk. He must do this; for should he permit us to occupy Richmond his destruction can be averted only by entirely defeating us in battle in which he must be the assailant. This movement, if successful, gives us the capital, the communications, the supplies, of the rebels. Norfolk would fall, all the waters of the Chesapeake would be ours, all Virginia would be in our power, and the enemy forced to abandon Tennessee and North Carolina. The alternative presented to the enemy would be to beat us, in a

position selected by ourselves, disperse or pass beneath the Caudine Forks. . . .

Should it be determined to operate from the lower Chesapeake the point of landing which promises the most brilliant results is Urbana on the lower Rappahannock. This point is easily reached by vessels of heavy draught; it is neither occupied nor observed by the enemy — it is but one march from West Point, the key of that region, and thence but two marches to Richmond. A rapid movement from Urbana would probably cut off Magruder in the Peninsula, and enable us to occupy Richmond before it could be strongly re-enforced. Should we fail in that we could, with the co-operation of the navy, cross the James and throw ourselves in rear of Richmond, thus forcing the enemy to come out and attack us, for his position would be untenable, with us on the southern bank of the river. . . .

I propose . . . to select Urbana as a landing place for the first detachments; to transport by water four divisions of infantry with their batteries, the regular infantry, a few wagons, one bridge train and a few squadrons of cavalry, making the vicinity of Hooker's position the place of embarkation for as many as possible, to ferry the regular cavalry reserve artillery and remaining bridge trains and wagons across the Potomac from near Cape Lookout, march them to the Rappahannock and ferry them over that. . . .

This movement, if adopted, will not expose the city of Washington to danger.

The total force to be thrown upon the new line would be according to circumstances from 110,000 to 140,000. . . .

So much am I in favor of the southern line of operations that I would prefer the move from Fortress Monroe as a base — as a certain though less brilliant movement than that from Urbana — to an attack upon Manassas.

In the picture here drawn of the Union army beating the enemy to Richmond and there, by a single victory in battle on the defensive, compelling the enemy to surrender or retreat, and thus at one stroke gaining all Virginia, Tennessee and North Carolina, are betrayed the illusions which we have seen McClellan harboring, that the Confederates would make Virginia the field on which to decide the war, and that one victory over them with the display of overwhelming strength would lead to peace. It is evident that, believing as he did that Johnston had an army as large as his own, McClellan here counted on the advantage of position at Richmond to give him the requisite

strength in effect. The movement by Urbana around Johnston's flank to win Richmond by surprise appealed to McClellan's sense of the dramatic. His desire to preserve his influence as a peacemaker after a decisive victory appears in the avowal above quoted from his letter that he did not wish to fight "useless battles" for "barren victory."

The President, perhaps estimating the superiority of the Union numbers better than did McClellan, notwithstanding the latter's letter and distrusting delays and uncertainties in the execution of the plan therein set forth, hesitated to turn away from the prospect of immediate victory in front of Washington. There is record of prolonged and anxious deliberations and differing judgments as to the ability to assemble quickly enough the great fleet of transports required by McClellan's plan.¹

The plans were still pending when news arrived from remote fields which well may have stirred McClellan to action by another plan which had his attention for a brief time, and which, if taken, might have changed the fortune of war in Virginia.

These tidings were of Burnside's capture of Roanoke Island, February 8, and the capture of Fort Henry on the Tennessee River, February 6, and Grant's march thence on the 12th against Fort Donelson on the Cumberland. These navigable rivers offered access from the Ohio to Kentucky and Tennessee, and, at their crossing by the direct railway from Columbus and Memphis to Bowling Green, to a vulnerable point in the Confederate line. Movements up these rivers had been suggested on November 20 to Halleck by Colonel Whittelsey and later had been discussed by McClellan, Halleck and Buell.² The developments in Grant's reconnaissance above mentioned were such that soon after its return he telegraphed Halleck on January 29: "With permission, I will take Fort Henry on the Tennessee, and establish and hold a large camp there. . . . From Fort Henry it will be easy to operate either on the Cumberland, only 12 miles distant, Memphis or Columbus."³ Halleck had not seemed to favor the project when previously

¹ 5 *W. R.*, 45-46.

² 7 *W. R.*, 440, 528, 529; 8 *W. R.*, 509, 510.

³ *Ib.*, 72, 561, 121.

proposed by Grant, and in his *Memoirs* the latter modestly suggests that Halleck, in assenting on January 30 to the proposal above quoted, was moved by the concurrent recommendation of Flag Officer Foote.¹ In fact he was moved by a trick of fortune. He was yet of the belief that he had not sufficient well-prepared troops in hand for a serious movement against the enemy, when McClellan, as if converted to the belief that the Confederates would spare troops from Virginia, telegraphed him on January 28 the declaration of a deserter from Centreville that "he had heard officers say that Beauregard was under orders to go to Kentucky with fifteen regiments from the Army of the Potomac" [Johnston's]. Halleck, too credulous of this news and judging that it was of the utmost importance to cut the railroad line from Columbus to Bowling Green before such a force could arrive,² on January 30 ordered Grant, with all his available troops and Foote's fleet, to go up the Tennessee, invest and take Fort Henry, and, after investing it, send cavalry to break up that railroad (passing a few miles from the fort) from Dover towards Memphis.³

The expedition started on February 4, and on the 6th the guns of the fleet silenced Fort Henry and compelled its surrender after about 2500 of its garrison had marched for Fort Donelson. On the same day Grant telegraphed Halleck: "Fort Henry is ours. The gunboats silenced the batteries before the investment was completed. . . . I shall take and destroy Fort Donelson on the 8th and return to Fort Henry," and by letter of same date added, "and return to Fort Henry with the forces employed unless it looks feasible to occupy that place with a small force that could retreat easily to the main body."⁴

Grant's force on February 8 was about 20,000. There can be no doubt that Halleck had informed him of the news, in Buell's despatch of February 3, that 10,000 men had been sent from Bowling Green who would oppose him at Fort Donelson, and of his own opinion that it would be the policy of the enemy to concentrate at Dover and attempt to retake Fort Henry.⁵

¹ Grant's *Memoirs*, I. 287; 7 *W. R.*, 121, 120.

² *Ib.*, 571, 572, 593, 122. In fact Beauregard went to Kentucky, but, contrary to the belief of the Comte de Paris, no troops went. 1 *Civil War*, 526; 5 *W. R.*, 1048, 1053; 7 *W. R.*, 861.

³ *Ib.*, 121, 122, 575, 577. Dover was several miles north of the railroad.

⁴ *Ib.*, 122, 124, 129, 140, 141, 125.

⁵ *Ib.*, 159, 580, 591, 593, 596.

Grant's quick perception of the feasibility and advantage of marching from his base at Fort Henry across the neck of 12 miles between the Tennessee and Cumberland to attack Fort Donelson was that of military genius. The capture of the fort opened the Cumberland River for use in the advance into Central Kentucky, the mere threat of which started the retreat of the Confederates thence to Tennessee.¹

Grant's decision to attack Fort Donelson at the supposed risk of encountering 12,000 or more indicated the intuition of a great commander, no less than his final decision, after his right wing had been forced back, to make the assault on February 15, which resulted in the surrender of the fort with 14,623 of the garrison. In fact his entire force during the operations was 27,000 against 21,000.²

News of the victory at Fort Henry and of the purpose to take Fort Donelson reached McClellan on February 7,³ and of the capture of the latter on the 16th or 17th.⁴ It is not unlikely that it was this news that awakened McClellan to the possibility of an operation on the lower Potomac similar to that effected by Grant. His correspondence at this time suggests a new interest in crossing the Potomac to reach Fredericksburg. On February 10 the Commander of the Potomac flotilla wrote him⁵ that embarkation at Liverpool, Smith's and Maryland Points could be concealed from the enemy, and that between Fooke's Landing and Boyd's Hole opposite, troops could be landed with little opposition, and discussed crossings to march on Occoquan or Dumfries, and gave distances from the landings to Fredericksburg. On February 13 McClellan advised Hooker⁶ that barges capable of carrying 8000 men would be sent him from Baltimore. Some months later Secretary Chase wrote in his diary:⁷

February came and on the 13th General McClellan said to me, "In ten days I shall be in Richmond." A little surprised at the near

¹ 7 *W. R.*, 861, 863, 880, 426.

² *Ib.*, 140, 141, 159, 161; *N. & L.*, 78. The march on and operations against Fort Donelson were delayed by high water, and on February 14 Grant feared he must besiege it. 7 *W. R.*, 596, 613, 614.

³ *Ib.*, 590, 591.

⁴ *Ib.*, 624, 625, 627. Possibly through Scott.

⁵ *Navy Records*, v. 20.

⁶ 107 *W. R.*, 530.

⁷ Schucker's *Life of Salmon P. Chase*, 446.

approach of a consummation so devoutly to be wished, I asked, "What is your plan, General?" "Oh," said he, "I mean to cross the river, attack and carry their batteries, and push on after the enemy." "Have you any boats to aid in the attack on the batteries?" "No, they are not needed. All I want is transportation and canal boats, of which I have plenty that will answer." I did not think it worth while to reply, but made a note of the date and waited.

On February 15 McClellan, writing Hooker¹ his opinion that the latter had better if possible attack all the batteries on the lower Potomac at once, added: "The sooner you make the effort the better. Should all be ready and the weather propitious, tonight would be better than any later time. . . . You can be re-enforced to any extent you may desire." On the same day Hooker replied² that he needed time to prepare and a dark night to conceal the movement, and on the 18th he telegraphed his opinion that landing at Fooke's Landing and Boyd's Hole gives "a better country to campaign in than at Aquia Creek," adding, "The effect on the war in Eastern Virginia would depend very much on the strength of the column. If of three divisions it would compel the enemy in the North to fall back without his railroads, enable us to take Richmond, or, if considered more important, capture Magruder's command." And again on the 20th that his balloon observations satisfied him that he could carry the batteries, and "the free navigation of the river will give us immense advantages over the rebels, particularly so long as the roads remain in their present condition, and the destruction of the batteries will in no way expose future intentions of the Major General in the conduct of the war."³ Proof that in this correspondence McClellan was looking to an advance on Richmond as well as an attack on the Potomac batteries, if needed, is found in his despatches⁴ of February 20 to Buell and Halleck — to the former at Bowling Green, "If the force in the West can take Nashville, or even hold its own for the present, I hope to have Richmond and Norfolk in three or four weeks"; and to the latter, "This army moves very shortly," and again (after hearing

¹ 107 *W. R.*, 532. See Hooker, January 27, 5 *W. R.*, 709.

² 5 *W. R.*, 722.

³ *Ib.*, 724, 725.

⁴ 7 *W. R.*, 640, 641.

of the fall of Clarksville at the railway crossing on the Cumberland):¹ "The rebels hold firm at Manassas. In less than two weeks I shall move the Army of the Potomac, and hope to be in Richmond soon after you are in Nashville. . . . We will have a desperate battle on this line." That McClellan did not here refer to his plan of moving by Urbana is proved by the fact that he knew that that expedition could not start until 30 days after the order for its preparation should be given, which order was given on February 27.²

The approach of the Potomac to the Rappahannock leaves between them at Fredericksburg a neck 10 miles in width. This presented the opportunity for an operation nearly identical with Grant's on the Tennessee, for transporting quickly on the Potomac, in the season of muddy roads, a column to carry or contain the batteries on its bank, and thence march on Fredericksburg or some more favorable lower crossing of the Rappahannock, defeating the 6000 Confederates³ posted to cover the approach to that city, and thence by a march of thirty miles or less reach, at Hanover Junction, the Virginia Central Railroad, the sole line from Richmond to Johnston's army at Centreville. Heintzelman's division, by a march of 10 or 12 miles from its left on Doogue Creek to Occoquan could compel troops from Manassas to make a wide *détour* for Fredericksburg and thence, with the rest of the Army of the Potomac not carried on the Potomac, could have reached Hanover Junction in advance of the Confederates.

In position at Hanover Junction McClellan's army could have fought the defensive battle for which he planned the movement via Urbana, or if Johnston, avoiding this, had marched around his flank to reach Richmond, the Union army could have taken a shorter route to that point.⁴

If there should be heavy roads it would be to the enemy's disadvantage on the longer route. The use of the Rappahannock for men and materials would be secured by the Union advance crossing at or below Fredericksburg.

¹ 7 *W. R.*, 644. On February 25 Foote's fleet took possession of Nashville, the Confederates having retreated South. *Ib.*, 659.

² 5 *W. R.*, 46.

³ The troops in Aquia District. *Ib.*, 1086.

⁴ Terrain and scale on *W. R. Atlas*, Plates VII, VIII, XII.

Early movement was advisable to insure the advantage of water transportation while heavy roads should impede the enemy, but McClellan soon began to entertain arguments for delay. On February 23 he proposed ¹ that Hooker should defer action until the expected arrival of the Monitor on the Potomac, although he offered the latter a re-enforcement of 10,000 to 15,000. Hooker in reply ² stated his opinion against waiting, on the ground that a favorable morning was more important, and asked, "If the additional force is sent, will it not be advisable to include Fredericksburg in the programme? The force directed against the batteries will soon be at liberty to re-enforce the column directed against the last-named place. They can be landed at Fooke's, it being nearer than at Aquia Creek. . . . Please advise me what post Heintzelman will take," etc. McClellan replied: ³ "If a favorable night and morning occur before the Ericsson [Monitor] arrives, surprise with your own troops the upper points, if possible, leaving out of consideration the lower point spoken of [Fooke's]. Should the Ericsson be here before a proper night offers, I will immediately arrange to accomplish the object in force, but will send no re-enforcements until that time."

At this point he consulted with Barnard, who advised that the project involved all that would be needed to open a campaign, and that it should not be undertaken "merely to capture the Potomac batteries," ⁴ that probably three divisions would be needed to defeat the enemy's force between the Occoquan and the Potomac, that this operation should be commanded by himself in person, or a general officer in command of the troops and the naval flotilla, and that "if it is not judged best to make an imposing movement beyond the Occoquan it is better to let the batteries alone than to undertake to silence them by landing" and then re-embarking. . . . "The way and the only way to take the works is to occupy the ground behind them." ⁵

The implication of the despatches above cited is that McClellan, if really contemplating the movement via Fredericksburg, did not take Hooker or Barnard into his confidence on this

¹ 107 W. R., 536.

² 5 W. R., 726.

³ 107 W. R., 536.

⁴ 5 W. R., 47, 48; 107 W. R., 542.

⁵ 107 W. R., 542.

point. In his report of August 3¹ he treats the deliberations on, and preparations for, crossing the lower Potomac as if they were directed only to the capture of the Potomac batteries, unless in a passage as follows: "The idea was at one time entertained by the President to use them [canal boats] in forming a bridge across the Potomac near Liverpool Point in order to throw the army over at that point."

At the time of the above correspondence with Barnard McClellan was at Harper's Ferry, where he had gone to observe or direct the movement to reopen and cover the Baltimore and Ohio Railroad. Although the failure to throw a permanent bridge over the river near Harper's Ferry for this purpose had determined him to abandon the project of covering the railroad for which he had intended to use the bridge and to return to Washington, he, upon receiving Barnard's advice above cited, on February 27 suspended the order for Hooker's movement across the lower Potomac.² It was never renewed. On the same day the President, probably not yet informed that McClellan had halted the movements for the objects so much desired by the government on the lower Potomac and in the Shenandoah valley, directed the assembling of the vessels for the movement to the lower Chesapeake which McClellan had planned.³ Before the vessels needed to begin this movement had been assembled, Johnston, by retiring to the Rappahannock on March 9, destroyed whatever chance there was that McClellan could achieve his hope of reaching Richmond ahead of Johnston, by a movement via Urbana. It is clear that from the day when he disclosed the plan to the President, whether February 3 or earlier, he was not at liberty before February 27 to begin its execution. Thus far, if we except the period when McClellan thought to move via Fredericksburg, and thus far only, does the record support his assertion:⁴

The fears of the administration and their inability to comprehend the merits of the scheme, or else the determination that I

¹ 5 W. R., 45, 48.

² *Ib.*, 48, 728; 107 W. R., 540, 542, 543.

³ 5 W. R., 46. As this order itself was the President's assent to McClellan's plan, Swinton errs in stating that he withheld the order "for almost a month" after approving the plan.

⁴ *Own Story*, 227.

should not succeed in the approaching campaign, induced them to prohibit me from carrying out the Urbana movement. They gave me the choice between the direct overland route via Manassas, and the route with Fort Monroe as a base. Of course I selected the latter.

The President well understood the great weakness in the plan of moving to the Peninsula, as appears in his letter to McClellan of April 9,¹ where he wrote:

"You will do me the justice to remember I always insisted that going down the bay in search of a field instead of fighting near Manassas was only shifting, and not surmounting, a difficulty, that we would find the same enemy, and the same or equal intrenchments at either place." This was undoubtedly a potent reason for his delay in approving McClellan's plan.

During all of the time the plan was under consideration the pressure from all sides for action by the army under McClellan at Washington was proof that no faction desired the loss of the campaign, in view of the treatment in his letter of February 3 of all plans then proposed as feasible. The radicals as well as others no doubt found reason for dissatisfaction with McClellan's respect for slaveholders' rights in their slaves, which might be attributed to his wish to keep a standing with them for the rôle of peacemaker, as shown in his orders to Buell and Burnside,² and by the belief avowed by him that the abolition of slavery should be postponed until the slaves should be fitted by education for freedom.³ But there is no need to believe that therefore the radicals tried, as McClellan extravagantly assumes, to precipitate him into a losing campaign as a necessary step to establishing the permanent rule of their party even at the cost of destroying the Union.⁴ They found ample motive, without this, to urge action by the army for the country's good.

It does not follow, from any disclosures in the record, that if McClellan between December 1 and the middle of January had proposed immediate execution of the Urbana movement the Administration might not have agreed to it. McClellan's long and unexplained inaction during that period may have influenced the President against the project when it was fully disclosed to him.

¹ 12 W. R., 15.

² *Own Story*, 33, 34.

³ 5 W. R., 37, 38, 39.

⁴ *Ib.*, 227.

Much less does it follow that McClellan had choice only of Manassas or Fort Monroe. Probably the President would have assented gladly to movement on the route via Fredericksburg, as did Secretary Chase on February 13. This was the movement which Johnston regarded as the most dangerous to him, and it is inexplicable that McClellan did not see it to be such and adopt it. By this route the water transit would have been not more than a tenth the distance of that by Urbana. The march to Richmond would have been 60 miles from Urbana, and about the same from the Potomac landings. From these landings to Hanover Junction it would have been about 37 miles. The movement to Hanover Junction would have been literally within the terms of the President's order of January 31, "with the object of seizing and occupying a point upon the railroad southwestward of what is known as Manassas Junction," and, ending within short reach of quick water transport to Washington, it would not have been open to the objection of leaving that city in danger from an attack by Johnston.

Possibly McClellan, misled by Pinkerton's exaggerated estimate of the Confederate numbers, which on March 8 remained at 150,000 as it was in October,¹ turned from this movement because it did not seem to insure him the display of overwhelming strength, by forestalling Johnston in the Richmond intrenchments. But in fact Johnston's effectives had fallen from 62,000 in December to about 48,000 in March, and from January 1 to March 9 there were in the Army of the Potomac 110,000 or more available for the movement.²

McClellan wrote in his report:³ "On my return from Harper's Ferry on the 28th of February the preparations necessary to carry out the wishes of the President and Secretary of War in regard to destroying the batteries on the lower Potomac were at once undertaken . . . [and] advanced as rapidly as the season permitted."

The record gives no other evidence of any preparation unless in the effort on March 5 to send scouts among the enemy's troops at Dumfries.⁴

¹ 5 W. R., 9, 736.

² *Ib.*, 736, 9, 10, 12, 13, 1015, 1040, 1074; Davis, *Rise and Fall of the Confederate Government*, II, 83, 85; 14 W. R., 405.

³ 5 W. R., 49.

⁴ 107 W. R., 548; 5 W. R., 735.

The movement of Johnston's army on March 9 back to the Rappahannock not only ended the chance, such as it was, of surprising, and beating, it in the race for Richmond by moving down the Chesapeake, but it also was immediately followed by the reduction of McClellan's command of all the armies to that of the Department of the Potomac alone. It remains to notice the instances of his exercise of the former command in fields other than those above mentioned.

T. W. Sherman's expedition of 12,000 men had sailed in October for Port Royal, South Carolina, where it was established upon the reduction of its forts by Du Pont's fleet on November 7.¹ McClellan instructed him, on February 14, 1862,² to lay siege to Fort Pulaski rather than attack Savannah, and otherwise to concentrate his attention on Fernandina and St. Augustine. On February 23³ McClellan also instructed Butler to sail for the Gulf of Mexico and proceed with his expedition of 15,000 to co-operate with the navy in its attack on New Orleans. The relation of these operations to the others embraced in McClellan's plans for all the armies will be considered later.

Mr. MORRISON communicated a paper on

THE STRUGGLE OVER THE ADOPTION OF THE CONSTITUTION OF MASSACHUSETTS, 1780.

To the *Proceedings* of this Society for November, 1916, Mr. Lord contributed a proposal of the town of Middleborough to nullify and overthrow the Massachusetts constitution of 1780, within four months of the date it had been formally proclaimed the fundamental law of the Commonwealth. To me this document was a complete surprise, as I had always believed that the greatest and most enduring of the revolutionary constitutions had been ratified by the people with substantial unanimity. An inspection of the original returns of the towns on the constitution, in the Massachusetts Archives, revealed a contrary condition of affairs. So numerous, indeed, and interesting were the objections, that I have thought it worth

¹ 6 W. R., 3, 4, 185.

² 5 W. R., 39.

³ *Ib.*, 40; 6 W. R., 699.

while to analyze and classify them, and tabulate the vote. As my research progressed, I was more and more impressed by the high degree of political wisdom possessed by the average citizen of Massachusetts in 1780. A few of the exceptions made to the constitution were fantastic. A considerable class were due to prejudice and inertia rather than to knowledge. But a still more numerous class of objections, particularly those to Article III of the Declaration of Rights, would be recognized as valid by any political scientist today. Many of them, in fact, have since been adopted as amendments to the constitution.

My tabulation of the vote on the two articles most frequently objected to (for the towns voted on the constitution, not as a whole, but clause by clause), made it doubtful whether the requisite two-thirds majority was secured on those questions. That led to an inquiry as to the exact method by which the constitution was ratified. I had always supposed that it was ratified by the people. Several modern authorities on history and government, including at least four of our members past and present, have stated as much in print. But a study of the method actually prescribed by the Convention, and followed, proved otherwise. The method is too complicated to be described by a single formula; but it is not far from the truth to state that the constitution was referred to the people for their consideration and detailed vote, the consent of two-thirds being a prerequisite; but ratified by an adjourned session of the Convention, with a fresh popular mandate. An examination of the Convention's methods of tabulating the popular vote raises the suspicion that the two-thirds majority was manufactured. I leave it to your judgment to decide whether the constitution of Massachusetts, now in force almost 137 years, was ever legally ratified.

I. THE METHOD OF ADOPTING AND RATIFYING THE CONSTITUTION.

I. PRELIMINARY ACTION OF THE LEGISLATURE.

After the draft constitution of February 28, 1778, had been rejected by the people, the General Court resolved to take the sense of the qualified voters on the questions whether they

chose to have a new constitution, and whether they would empower their representatives to call a Convention for the sole purpose of framing one.¹ The vote on both questions being favorable,² the General Court passed a resolve on June 15, 1779, directing the selectmen "of the several Towns and Places within this State" to call a meeting of their respective towns in order to elect as many delegates to the Constitutional Convention as they were entitled to send representatives to the House. It was expressly provided that "every Freeman, Inhabitant of such town, who is twenty-one years of age, shall have the right to vote," although a property qualification was at this time required for voting for representatives. The constitutional Convention, then, rested on a wider electorate than the existing state government. It was elected by, and submitted its work to, the People, in the widest contemporary political sense of that word.

The same resolve recommended the inhabitants "to instruct their respective Delegates" to submit such "Form of a Constitution they may agree upon in Convention" back to the same electorate, assembled in town meetings, "in order to its being considered and approved or disapproved by said Towns and Plantations. And it is also recommended to the several Towns within this State, to instruct their respective Representatives to establish the said Form of a Constitution, as the Constitution and Form of Government of the State of Massachusetts Bay, if, upon a fair examination, it shall appear, that it is approved of by at least two-thirds of those, who are free and twenty-one years of age, belonging to this State, and present in the several town meetings."³

The important thing to be noted here is that the General

¹ *Journal of the Convention for framing a Constitution of Government for the State of Massachusetts Bay, from . . . September 1, 1779, to . . . June 16, 1780.* (Published by order of the Legislature, Boston, 1832), 189. This is the only printed edition of the Journal, the ms. of which is in the Mass. Archives, CCLXXVI. The work cited includes an appendix in the legislative resolves calling the Convention into existence, the report of the General Committee of the Convention, the constitution as finally agreed upon by the Convention, and "ratified" by the people, the Convention's address to the people, and the rejected constitution of 1778. This last document has recently been reprinted by the Old South Association as *Old South Leaflet*, No. 209.

² *Supra*, p. 245.

³ *Journal of the Convention*, 5-6.

Court *recommended* a certain mode of ratification, but did not presume to bind the Convention to adopt that particular mode. The Convention derived all its authority from the people, and was not bound in any shape or manner by the existing legislative body of the State.¹

2. THE CONSTITUTIONAL CONVENTION OF 1779-1780.

a. *The First and Second Sessions, September 1-November 12, 1779.*

The Constitutional Convention convened, on September 1, 1779, at the old Meeting House of the First Church in Cambridge, the site of which, in Harvard Square, is now marked by a tablet. The list of members prefixed to the Journal of the Convention contains 293 names, although the highest recorded vote on any question was but 247.² At the first session James Bowdoin was elected President, and Samuel Barrett Secretary of the Convention. On September 4 the Convention appointed a committee of thirty to prepare a constitution to be laid before the whole body and on September 7 adjourned to give the committee time to prepare its report. This General Committee, as is well known, delegated its duties to a subcommittee of three, consisting of Bowdoin and the "brace of Adamses," and that committee left the entire task to John Adams.

The second session of the Convention began on October 28, 1779. Nineteen more members produced their credentials and took their seats. On the afternoon of that day, the General Committee reported the Adams draft, which was forthwith printed.³ The remainder of the session, until November 12,

¹ It even refused to ask the General Court for salaries and mileage. *Journal of the Convention*, 183.

² 34 from Suffolk (including the present Norfolk County), 46 from Essex, 43 from Middlesex, 63 from Worcester, 35 from Hampshire (including the present Hampden and Franklin counties), 16 from Plymouth, 2 from Barnstable, 20 from Bristol, 8 from the Maine counties, and 26 from Berkshire. Very few towns were unrepresented except in Maine, Barnstable, Dukes County, and Nantucket. The two island counties were cut off from the continent by the war, and took no part in framing the constitution; and Maine east of the Penobscot was occupied by the enemy.

³ *The Report of a Constitution or Form of Government for the Commonwealth of Massachusetts: — agreed upon by the Committee to be laid before the Convention of Delegates assembled at Cambridge, on the first day of September A. D. 1779; and continued by adjournment to the twenty-eighth day of October following.* Reprinted

was devoted almost exclusively to the Declaration of Rights, particularly to Article III. John Adams attended up to the last day, but sailed for France on the 13th.¹ Opinions differ on his ability as a diplomatist, a rôle to which he was fitted neither by training nor disposition; but there can be no two opinions regarding his ability as a constitution maker, or the loss that the Commonwealth sustained through his absence from the concluding sessions of the Convention.

b. *Third Session, January 5 (27)–March 2, 1780.*

The third session should have commenced at the Representatives' Chamber in the Old State House, Boston, on January 5, 1780. During the previous session, attendance had fallen off to such an alarming extent that the faithful minority published an advertisement in the newspapers urging a constant and general attendance henceforth, "as the business of the Convention is not of a transient, but permanent nature, and is designed for the benefit of the remotest ages of this Commonwealth, the presence and assistance of the whole body is expected and required; which will have a tendency to remove those local and temporary prejudices and views which might otherwise endanger the acceptance of the best Constitution the Convention can propose."²

But in the meantime the hard winter of 1780 had settled down. Oldest inhabitants said it was the worst since that of 1717, which Cotton Mather has so vividly described; although less elderly inhabitants insisted that they remembered even deeper snow in 1740. Certainly no winter so severe occurred within the next half century. Boston Harbor was frozen up to Nantasket Roads, so that for a month no vessel could enter or leave the port. In the country the cold was so intense that wells and springs froze solid, and the snow lay so deep on the roads that travel was impossible save by snowshoes. On January 20 the Boston-Hartford road was the only one open to travel in the central part of the state, and three months later the snow still covered the fences in some of the western towns.

in the *Journal of the Convention*, 191–215, and, with notes, in the *Works of John Adams*, IV. 219–267.

¹ *Ib.*, I. 297.

² *Journal of the Convention*, 50.

The effect on the Convention was to postpone the real opening of its third session until January 27, when only sixty members were present; and in spite of frequent and vigorous appeals for better attendance, the number of members present and voting never exceeded 82.¹ On this rump of a convention, in which large sections of the state were unrepresented, fell the vital task of amending John Adams' draft into the finished frame of government.²

c. *The Method of Ratification adopted by the Convention.*

On February 23, 1780, the Convention appointed a committee "to consider and report a suitable time and place to which this Convention shall adjourn . . . in order to obtaining and acting upon the sense of its constituents upon such a Constitution or Frame of Government as may be agreed upon, and sent out to them for their revision, and also to what extent and effect it may act upon the same when obtained."³ This committee reported on February 29 and March 1 and 2 — its first report being accepted, the second recommitted, and the third rejected. The entries in the journal are so involved and contradictory that it is impossible to trace clearly the formation of the final resolve. It is evident, however, that some members wished submission to the people, amendment if need be, an adjourned session of the Convention, and resubmission to the

¹ *Journal of the Convention*, 55-57. Only 47 towns were then represented, 33 of them in Suffolk, Essex and Middlesex counties. The high-recorded vote in the journal was 82, on February 16. It fell off gradually to 36, on the 28th, the last day on which numbers are recorded.

² The journal of this session, from its real commencement, on January 27, 1780, to its end on March 2, occupies 113 pages in the printed edition, as compared with 48 pages for the other three sessions. The appointments to the committees on perfecting and amending various sections were as fairly distributed among the members from various sections of the state as the unequal attendance would allow. John Lowell of Boston served on thirteen committees, and the following on five or more: Samuel Adams, Ellis Gray, and James Sullivan of Boston, John Pickering of Salem, George Cabot of Beverly, Jonathan Jackson of Newburyport, Levi Lincoln, Jr., of Worcester, Timothy Danielson of Brimfield, Robert Treat Paine of Taunton, John Cuming of Concord, and Rev. Samuel West of Dartmouth. Theophilus Parsons apparently did not arrive until February 15, but was immediately appointed to three important committees.

³ *Journal of the Convention*, 135. The committee consisted of James Sullivan, R. T. Paine, General Danielson, Rev. Henry Cummings of Billerica, and Rev. Samuel West.

people. Others suggested a special ratifying convention, similar to the one that acted upon the Federal Constitution in 1788. No one appears to have brought up the precise method recommended by the General Court in its resolve of June 15, 1779.¹ A new and smaller committee, consisting of Sullivan, Lowell, and Paine, completed the work on March 2; and the completed resolves on the mode of ratification, as agreed upon by the Convention and notified to the selectmen of the towns, are as follows:

Resolved, That this Convention be adjourned to the first Wednesday in June next, to meet at Boston; and that Eighteen hundred Copies of the Form of Government which shall be agreed upon be printed; and, including such as shall be ordered to each Member of the Convention, be sent to the Selectmen of each Town and the Committees of each Plantation, under the direction of a Committee to be appointed for the purpose: And that they be requested as soon as may be to lay them before the Inhabitants of their respective Towns and Plantations. And if the major part of the Inhabitants of the said Towns and Plantations disapprove of any particular Part of the same, that they be desired to state their Objections distinctly and the Reasons therefor: And the Selectmen and Committees aforesaid are desired to transmit the same to the Secretary of the Convention on the first Wednesday in June, or if may be, on the last Wednesday in May, in order to his laying the same before a Committee to be appointed for the purpose of examining and arranging them for the revision and consideration of the Convention at the Adjournment; with the Number of Voters in the said Town and Plantation Meetings, on each side of every Question; in order that the said Convention, at the Adjournment, may collect the general sense of their Constituents on the several Parts of the proposed Constitution: And if there doth not appear to be two thirds of their Constituents in favour thereof, that the Convention may alter it in such a manner as that it may be agreeable to the Sentiments of two thirds of the Voters throughout the State.

Resolved, That it be recommended to the Inhabitants of the several Towns and Plantations in this State, to empower their Delegates at the next Session of this Convention, to agree upon a Time when this Form of Government shall take Place, without returning the same again to the People: *Provided* that two thirds of the Male

¹ *Supra*, 355. Note that the resolve in question says "instruct their respective *Representatives*"; i. e., the existing House of Representatives, and not the Convention.

Inhabitants of the Age of twenty one years and upwards, voting in the several Town and Plantation Meetings shall agree to the same, or the Convention shall conform it to the Sentiments of two-thirds of the People as aforesaid.

Resolved, That the Towns and Plantations thro' this State have a Right to choose other Delegates, instead of the present Members, to meet in Convention on the first Wednesday in June next, if they see fit.¹

This complicated mode of ratification may be summarized as follows:

1. Discussion of the constitution by the people in town meeting assembled.

2. Every town meeting to vote on the constitution, clause by clause, and state objections to any article that does not obtain a majority.

3. A new grant of authority by the sovereign people to the adjourned Convention, to

- (a) tabulate the popular vote on the constitution; and
- (b) if there appears to be a two-thirds majority for every part, to ratify the constitution and declare it in force; or
- (c) if there does not appear to be a two-thirds majority, to alter the constitution in accord with the popular will, and ratify it thus amended.

The best brief description of the whole process is on the title-page, here reproduced in facsimile, of the edition of the constitution that was distributed among the several towns.

The Convention was confronted with conditions which made the popular acceptance of any constitution seem almost hopeless. The towns were tenacious of their power, the people jealous of authority, and self-appointed experts on government were scattered throughout the state. At the break-up of royal authority in 1774, the Massachusetts town meetings had acquired many powers that in every well-regulated government are exercised by the central authority. The towns were, in fact, the several sovereigns of Massachusetts-Bay; their relation to the General Court closely approximated that of the states to the Congress of the Confederation, with the important difference that there were not thirteen, but almost three hundred of them.

¹ Page 52 of the edition whose title-page is reproduced in facsimile.

CONSTITUTION

OF

FRAME OF GOVERNMENT.

Agreed upon by the DELEGATES of the People of the State of
MASSACHUSETTS-BAY.

IN

CONVENTION.

Begun and held at *Cambridge* on the First of *September*, 1779,

AND

Continued by Adjournments to the Second of *March*, 1780;

To be submitted to the Revision of their Constituents, in Order
to the completing of the same, in Conformity to their Amend-
ments, at a Session to be held for that Purpose, on the First
Wednesday in *June* next ensuing.

BOSTON: STATE of MASSACHUSETTS-BAY,

Printed by BENJAMIN EDES & SONS, in State-Street,
M, DCC, LXXX

They had been carefully consulted in the last few years regarding every step in constitutional development, and many other matters as well. They must be handled with gloves in order to secure their consent to the new constitution. Popular prejudice against authority and political power, by whomsoever exercised, was never stronger than in 1780; the negative theory of natural rights as expounded by Locke was at the back of political thought. And political thought was particularly fecund in revolutionary Massachusetts. The Commonwealth teemed with notions of government. John Adams, writing from Philadelphia in 1776, was "grieved to hear . . . of that rage for innovation which appears in so many wild shapes in our province."¹ The ferment had somewhat subsided by 1780, during the hard realities of war; but the village Hampdens and Sidneys were still a force to be reckoned with.

With these conditions as the background, the purpose of the mode of ratification adopted by the Convention of 1780 becomes clear. An unconditional submission of the constitution "in the lump," as Pittsfield expressed it,² would have brought about certain rejection. The constitution of 1778 had been rejected by a vote of five to one. By giving the people an opportunity to discuss every article and state their objections, the Convention not only flattered its constituents, but supplied a safety valve for the airing of democratic prejudices and notions. The Convention's request for authority to complete and ratify the constitution was rather a large order; but the opportunity to send new delegates to the adjourned session made it more palatable.

By acquiring the power to alter and ratify the constitution, the Convention made sure that its work would not be lost; and by inducing the people to waive their right of a resubmission after alteration, much time would be saved. One detail, however, was clumsily worked out — the provision for altering the constitution "agreeable to the sentiment of two-thirds of the voters," in case there was not a two-thirds majority for the whole draft. If the people voted in the proportion of one yea to two nays, and the nays all made the same objection,

¹ 5 *Collections*, iv. 310.

² J. E. A. Smith, *History of Pittsfield*, i, 367. This instruction of Pittsfield to its delegate suggests the outline of the method of adoption.

well and good. But what if the vote turned out to be in the proportion of three in favor of the constitution, to two against it for various reasons? Here was no two-thirds majority; yet how alter it to suit two-thirds?

II. THE CONSTITUTIONAL CONTROVERSY, MARCH-JUNE, 1780.

I. THE BACKGROUND OF THE STRUGGLE.

The towns had fourteen weeks, from March 2 to June 7, 1780, to discuss and take action upon the constitution. The ordinary printed sources of information suggest that the people took very little interest in their fundamental law. I have been able to find mention of but two pamphlets for or against the constitution. As Mr. Lord has observed,¹ not one of the six newspapers then published in Massachusetts² published the text of the constitution, and the only discussions of it in their columns were a series of controversial articles between two members of the Convention, largely relating to Article III; a few letters from the Rev. Isaac Backus and Dr. William Gordon; and a few reprints of town returns. Not a single newspaper, so far as I can discover, notified its readers when the constitution was ratified.³ No one of the leading politicians carried the controversy outside his own town, and references to the constitution in such political correspondence as we have are exceedingly scanty.

Massachusetts, in fact, had other things to think of. It was perhaps the darkest period of the war. The French alliance had not yet proved its value to the cause. In the summer of 1779 occurred the disastrous Penobscot expedition, which left all Maine east of the Penobscot in the hands of the enemy, and saddled the state with an additional load of debt.⁴ Con-

¹ *Supra*, p. 57.

² The *Boston Gazette*, *Independent Chronicle*, *Continental Journal*, *Independent Ledger*, and *Evening Post*, and the *Worcester Massachusetts Spy*. All these were weekly papers of two to four pages each. The Society has almost complete files for the period mentioned. Judging from the character of the communications they printed, the *Gazette* and *Chronicle* were against the constitution.

³ Yet the *Independent Ledger* devoted one of its four pages in its issue of June 19, 1780, to "A Humorous and Generous Frolic of the late Duke of Montague."

⁴ The total taxes levied by the General Court in 1779 and 1780, were £6,-

gress practically confessed bankruptcy in March. Sir Henry Clinton, completing the conquest of South Carolina, was almost ready to transfer his forces to New York. General Washington, with his army on the Hudson undermined by sickness, desertion¹ and lack of supplies, was writing to the state government every week, begging for its overdue quotas of men, clothing, and money. The Tories were taking heart again, and openly exulting. "Where is the public spirit of the year 1775?" wrote General Paterson from West Point to General Heath at Boston. "Where are those flaming patriots who were ready to sacrifice their lives, their fortunes, their all, for the public?" Lafayette, landing in Boston on April 28, brought the welcome news that Rochambeau's army was on its way, and his own boundless optimism was a promise of better days for the common cause. But there followed the famous Dark Day of May 19, 1780, when the light of the sun was almost completely obscured at noontime. Pious gentlemen quoted Amos viii. 9, and some detected the odor of sulphur and brimstone in the dense smoke from northern forest fires that caused this depressing phenomenon.

2. THE WORK OF THE TOWN MEETINGS.

In this most gloomy spring Massachusetts had known since the Woeful Decade, the people may well have been excused from giving their constitution the attention it deserved. Yet the contents of two bulky volumes in the Massachusetts Archives proved that below the surface, in the primary assemblies of the people, a vigorous, healthy constitutional contest was going on. The returns from the towns, which these volumes contain,² threw a searching light on the mental process, and the

658,567, 17s., 9½d., and £5,706,469, 16s., 7d., of course, figures inflated by being measured in a much depreciated currency.

¹ Col. Thomas Nixon, of the First Massachusetts Brigade under General Washington, issued a proclamation on February 28, 1780, ordering officers and enlisted men of his brigade who had outstayed their leave to return immediately, under pain of being considered deserters. *Independent Ledger*, March 10. On May 5, the General Court passed an act to prevent and punish desertion, and on May 31 General Washington promised by proclamation a pardon to all deserters who would return within three months. *Ib.*, June 19. A broadside was issued by the General Court on June 30, ordering the towns to fill quotas called for the previous October.

² Vols. CCLXXVI and CCLXXVII. These contain returns from 188 towns only.

political theories of the ordinary Yankee citizen of 1780. The Convention had invited the towns and plantations, when the constitution was laid before them, "to state their objections distinctly and the reasons therefor." This invitation was in general accepted with alacrity. Defective in grammar and crude in expression, these returns show a grasp of the fundamental principles of government, an insight into the particular problems of Massachusetts, a critical and constructive faculty, that compare favorably with the work of the famous leaders of revolutionary thought. They anticipated, in fact, most of the amendments that were made to the constitution of Massachusetts during the next seventy-five years.

The returns differ greatly in form and substance. As the Convention furnished no printed form,¹ and no very precise directions, a wide scope was left for local individuality. The length varies from thirty-five words (Marlborough) to a book of twenty-three closely written quarto pages (Northampton). The form varies from a brief acceptance or rejection of the whole constitution, to a neatly tabulated vote on every article, with precise objections to the articles that did not pass.² There was also a great variance in the size of the vote that turned out, and the amount of time consumed. The attendance at the town meetings was apt to dwindle away as the read-

As there is not a single return from Essex, the most wealthy and populous county in the state, and as various indications showed that many other towns made returns which have not been preserved, I have endeavored to obtain copies of the missing records in the town proceedings. A ms. list in vol. CCLXXVII. f. 124, gives the total number of towns and plantations from which returns were expected as 290. This includes the four towns of Dukes County and Nantucket, which were so isolated that they took no part in the constitutional movements of the period; but does not include the Maine towns east of the Penobscot, in territory occupied by the enemy. Accordingly I sent a circular letter, with reply post card, to the clerks of about a hundred towns in Maine and Massachusetts, from which no returns on this question are found in the Archives. At the date of printing, 35 have replied either that there is no reference to action on the constitution in their proceedings, or that their existing records do not cover the year 1780; 32 have furnished copies of their town records on this subject, which will be deposited in the library of the Society. I have personally inspected the records of 4 other towns in Essex County; and in a few cases the requisite data have been found in town histories. In most cases, unfortunately, these transcripts do not fill the lack of original returns, for the town clerks did not always copy the proceedings in full into their own records.

¹ A few towns, however, returned the copy of the printed constitution that had been furnished them, with their votes entered on the margin.

² See the return of Boxford, *infra*, p. 403.

ing of the long document proceeded. "It was late before we Got through it, after Sunsett," wrote the selectmen of Mansfield, "and many persons Gone before this last question was polled, and but 31 that voted. But no Person appeared against it."¹

In Boston, 887 voters turned out, the highest numerically, and almost the highest proportionally, in the state, about one-eleventh of the total population.² The proportion in the other towns varied from one-ninth, in Rehoboth, to one seventy-second in Plymouth, and one one-hundredth in Biddeford, Maine.³ In general, the western counties showed much greater interest than the seaboard counties, and Maine, least of all. The total number present and voting at the most numerous meeting in all the towns that made returns was not far from 16,000, of which less than 500 belonged to Maine. The estimated population of Massachusetts proper in 1780, is 307,000; of Maine, 55,500.⁴

Some towns disposed of the matter in a single meeting, but the majority held two or more sessions on the subject. South Hadley met seven times before it could reach a decision. Boston, after one morning and two afternoon sessions on May 3 and 4, adjourned to the 8th at three P.M., recommending that all shops be closed and business suspended at that hour in order to secure a full attendance, and that the ministers of the Gospel "remind their respective congregations the next Lord's day, of this Adjournment, and of the importance of universally withdrawing themselves a few hours from their ordinary

¹ Mass. Archives, CCLXXVII. f. 39. The vote of Stockbridge town meeting fell off from 117 on the first article of the Declaration of Rights to 17 toward the latter part of the frame of government, and rose again to 26 on Chapter VI, Art. x. *Ib.*, CCLXXVI. f. 21.

² Taking Lemuel Shattuck's computation of 10,000 for the population in 1780, in his City Council Report of 1845, p. 5. But 968 voters turned out to oppose the constitution of 1778.

³ Rehoboth's total vote was 455, Plymouth's 37, and Biddeford's 10. Their population, according to the census of March, 1776, was, respectively, 4191, 2655, and 1006. "We are sorry there are so few met," reads the return of Biddeford, "but think that ought not to dishearten any, but rather to quicken to Zeal and Perseverance those who are desirous of Order, Regularity, and good Subordination." And at the foot of the return is written, "Ten men may save the city."

⁴ Compare the table at the end of this article with column A of the table on p. 248. The estimate of population in 1780 is from *A Century of Population Growth*, 9.

Employments, and directing their Attention to a Matter so deeply interesting to themselves and their Posterity." The meeting on May 8 lasted until dark, and three more sessions were necessary to complete the business.¹

The procedure employed in the greater number of towns. was to read the constitution aloud, to appoint a committee (including generally the town's delegate) to draft amendments to all objectionable articles, and to receive and vote on the report at a subsequent meeting. A division was generally taken upon every article about which a controversy took place, and upon the whole constitution as amended by the town. The Convention expressly did not encourage the towns to subject the whole document to a vote, and few did, save those too indifferent to spend time on a detailed discussion. A notable exception was Pittsfield, whose eighty votes were cast unanimously for the whole constitution in spite of the fact that in several points it contradicted the principles Pittsfield had been putting forward since the beginning of the war, and which the town's delegate in the Convention was expressly instructed to secure. The Rev. Thomas Allen, who signed the return, was the leader of the "Berkshire Constitutionalists," who began the movement for a popular constitution. Berkshire was then in a disorganized state, a veritable *regnum in regno*, "No Constitution, No Law" was the popular cry. The people refused to permit the courts of justice to sit until a constitution was adopted, and the sober conservative element of the population was probably by this time in favor of law and order at any price.²

But only a small minority of the towns that made returns voted on the constitution as a whole. The figures one occasionally meets with, purporting to give the total popular vote for and against the constitution of 1780, are pure fiction.

Most returns were headed, "At a meeting of the freeholders and other inhabitants twenty-one years old and upwards, to take into consideration a Constitution or Form of Government," etc. I have seen no instance in which a town described its return as a ratification. The fact that the Convention, not the people, was to ratify the constitution, seems to have been gen-

¹ *Boston Record Commissioners*, 127-40.

² J. E. A. Smith, *History of Pittsfield*, I., chaps. XVIII-XX.

erally recognized.¹ The tone of all but very few returns was respectful, even deferential. "We hope to be pardon'd," concludes Ward (Auburn), "in thus freely opening our thots in these affairs, as we never had a member in the Convention. Respectfully submitting the matter therefore to the wisdom and candor of that venerable Body, we shall Rejoice to see a happifying Establishment of Government completed as soon as may be." ²

The few towns that were not respectful, and which disagreed with pretty much everything in the constitution, seem to have been infected by the general otherwise-mindedness of our sister commonwealth. Bellingham and Medway, which had maintained a peculiar attitude on constitutional questions throughout the Revolution,³ belong to this class, and Freetown, Rehoboth, and Swansea; all on or near the Rhode Island boundary.

3. THE QUESTION OF CHURCH AND STATE — DECLARATION OF RIGHTS, ARTICLE III.

Article III of the Declaration of Rights, which virtually established Congregationalism as the state religion of Massachusetts, produced more discussion and opposition than any other part of the constitution. This article was not the work of John Adams, although he seems to have approved it. Its original form in the report of the General Committee was due to another member.⁴ In the Convention it was more largely debated than any other article. The rule against a member speaking more than twice on the same question was suspended. "A free and general debate ensued," in the course of which the ancient atrocities of the German Anabaptists were raked up against the Baptist advocates of religious liberty, who retorted by comparing religious taxation to a certain practice of the sons of Eli.⁵

The article was then committed to two future governors of

¹ Cf. language of Bowdoin in 2 *Proceedings*, VIII. 290.

² Mass. Archives, CCLXXVII. f. 116.

³ Harry A. Cushing, *Transition*, 200, *et passim*.

⁴ He attended the Convention up to and including the day it was adopted (November 10, 1779), and has left no record of his disapproval. *Works of John Adams*, IV. 222-25.

⁵ *Independent Chronicle*, December 2, 1779.

the Commonwealth (Samuel Adams and Caleb Strong), a future Judge (Robert Treat Paine), and Chief Justice (Theophilus Parsons), of the Supreme Court, one of the leading patriots of Western Massachusetts (Timothy Danielson), the minister of the Second Congregational Church in Medway (Rev. David Sanford),¹ and the minister of the First Baptist Church in Bellingham (Rev. Noah Alden).² The report of this committee was amended and adopted by the Convention on November 10, 1779, as Article III of the Declaration of Rights. It reads as follows, in the first edition of the constitution which was distributed to the towns:³

III. As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion and morality; and as these cannot be generally diffused through a community, but by the institution of the public worship of God, and of public instructions in piety, religion and morality: Therefore, to promote their happiness, and to secure the good order and preservation of their government, the people of this Commonwealth have a right to invest their legislature with power to authorize and require, and the legislature shall, from time to time, authorize and require, the several towns, parishes, precincts, and other bodies politic, or religious societies, to make suitable provision, at their own expence, for the institution of the public worship of God, and for the support and maintenance of public protestant teachers of piety, religion and morality, in all cases where such provision shall not be made voluntarily.

AND the people of this Commonwealth have also a right to, and do, invest their legislature with authority to enjoin upon all the subjects an attendance upon the instructions of the public teachers aforesaid, at stated times and seasons, if there be any on whose instructions they can conscientiously and conveniently attend.

PROVIDED notwithstanding, that the several towns, parishes, precincts, and other bodies-politic, or religious societies, shall, at all

¹ In the list of members at the beginning of the printed Journal, his name is incorrectly given as Daniel Stanford. Cf. E. O. Jameson, *History of Medway*, 124-26.

² *Journal of the Convention*, 40. The first three were devout and intolerant Calvinists; Judge Parsons only joined a church late in life (*Memoir*, by T. Parsons, Jr., 308-11), but identified himself, as attorney and chief justice, with a narrow and illiberal interpretation of Article III.

³ See facsimile, p. 361.

times, have the exclusive right of electing their public teachers, and of contracting with them for their support and maintenance.

AND all monies paid by the subject to the support of public worship, and of the public teachers aforesaid, shall, if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination, provided there be any on whose instructions he attends; otherwise it may be paid towards the support of the teacher or teachers of the parish or precinct in which the said monies are raised.

AND every denomination of christians, demeaning themselves peaceably, and as good subjects of the Commonwealth, shall be equally under the protection of the law: And no subordination of any one sect or denomination to another shall ever be established by law.¹

¹ For readers not initiated into the mysteries of New England ecclesiastical law and nomenclature, it may be well to explain some of the phrases of Article III, which had a perfectly definite meaning in 1780, though vague today. A *parish* in Massachusetts was (1) a territorial unit, usually coterminous with the township, though many large townships were divided into two or more parishes, which in this case were often called *precincts*; (2) a corporation consisting of all those who lived within the territorial limits of the parish or precinct, except those who formally joined a Baptist, Episcopal, or other dissenting church. The term *religious society* was applied both to parishes in their corporate sense, and to any other religious corporation. A *Church*, in Massachusetts, meant the body of communicants, or full-fledged church members of a religious society; and was never officially applied to the church edifice, called the *meeting-house*. A *public teacher* of piety, religion, etc., was a modification of the old Puritan term, "teaching elder," meaning, minister of the gospel. He was, by a law of 1692, nominated by the Church and confirmed by the parish; paragraph 3 of Article III was an innovation, and produced such unexpectedly liberal results that it was compared to the cockatrice's egg. Both before and after 1780 a Congregational minister had to be ordained by a council of his colleagues from other towns. In probably a majority of the towns, in 1780, the inhabitants were unaware of any distinction between parish and town, the affairs of both corporations being transacted in town meeting, and entered in the same book.

Massachusetts did not, like South Carolina, prescribe articles of faith in her constitution, or statutory law. The Word "orthodox" (i. e., Calvinist according to the 17th Century Cambridge Platform) and the word "Congregational" are not found in Article III. None the less did it favor the Congregational Churches, which with trifling exceptions were then orthodox, as quasi-official churches of the Commonwealth. This came about, because under the Province laws, every new town was obliged to secure an "able, learned, orthodox" minister, and provide him with a salary and meeting house. Hence every Massachusetts town in 1780 was supposed to have a Congregational church; and where more than one church existed, the Congregational was the oldest. The courts held that every citizen belonged to the oldest religious society in his town or precinct, unless he expressly joined some other (Oakes v. Hill, 10 Pickering, 333); and it was the oldest religious society in every town that received the religious taxes of all save those who expressly joined some recognized dissenting church.

It must be confessed that Article III was reactionary. It not only continued the religious system of the province, but exalted it to fundamental law, out of the reach of ordinary legislative enactment. The Provincial system, which was still in force in 1780, may be described as compulsory support of at least one Congregational Church in every town, by public taxation on all polls and estates, with special exceptions for Baptists, Quakers, and members of the Church of England, under certain conditions.¹ Article III was even less liberal than this system, for instead of exempting members of dissenting sects from religious taxation, it merely gave them the privilege of paying their taxes to their own pastors. Unbelievers, non-church-goers, and dissenting minorities too small to maintain a minister, had to contribute to Congregational worship. The whole article was so loosely worded as to defeat the purpose of the fifth paragraph. Every new denomination that entered the Commonwealth after 1780, notably the Universalists and Methodists, had to wage a long and expensive lawsuit to obtain recognition as a religious sect. Town treasurers refused to give regular dissenting ministers their share of the tax. The courts recognized the general principle that all persons and estates were liable to taxation for the Congregational church in their town, and construed the exemptions so narrowly that a subordination of sects existed in fact.² One may say that the ecclesiastical history of the Commonwealth during the next fifty years amply fulfilled the prophecy of the town of Raynham: "It is our opinion that the Said Third Article in the Bill of Rights ought to be more explicit so that it may be

There was nothing, however, in Article III to prevent a Congregational parish from adopting Unitarian instead of Calvinistic tenets; and so many did so after 1800 that the orthodox members of many ancient churches (sometimes, indeed, the whole *church*) were forced to secede from the *parish* and form a dissenting organization; thereby finding themselves in the unfortunate position originally designed for their opponents. When Chief Justice Parker refused them redress in the great Dedham case of *Baker v. Fales*, great was the wailing and gnashing of teeth.

¹ The Provincial system is described in detail in an admirable monograph by Miss Susan M. Reed, *Church and State in Massachusetts, 1691-1740*. (University of Illinois Studies in Social Sciences, III. No. 4, Urbana, 1914.)

² In *Barnes v. Falmouth*, 6 *Mass. Rep.* 401, C. J. Parsons refused to recognize any minister as legally entitled to receive the taxes of his flock unless he were settled over an incorporated religious society. For the working of the system see Buck, *Mass. Eccl. Law*, esp. chaps. ii and iii, and Hovey, *Backus*, chap. xviii.

Easily understood by all men. If not there will be Danger of Different Societies Quariling and Contending in the Law about their Rights which will Tend to the Destruction of Piety, Religion and Morality and Entirely Subvert the Intention of said Third Article."

"We flatter ourselves," says the Address of the Convention to its constituents, "that while we have considered Morality and the Public Worship of God, as important to the Happiness of Society, we have sufficiently guarded the rights of Conscience from every possible infringement."¹ But many towns which agreed with the first clause of this statement, joined Raynham in dissenting from the second. Article III is "very ambiguously expressed," said Grafton. Andover cast its 181 votes against the article on account of the obscurity of the fourth paragraph.² It "means anything or everything, or really intends nothing," said Middleborough. Dartmouth and Norton wished more explicit assurance that those who support public worship of their own, will not be obliged to pay for any other public teacher. Four hundred and twenty voters in Boston supported an amended article which provided that the religious taxes of whomsoever could not conscientiously attend any ministration in his neighborhood should be applied to the support of the poor.³

But the main opposition to Article III was directed against the principle of compulsory support for a religious establishment. This opposition was led by, though not confined to, the Baptists, who always have been and still are exponents of religious liberty in the widest sense of the word, and the absolute separation of church and state. The leader of the Baptists was the Reverend Isaac Backus, of Middleborough.

This man was one of the most remarkable New Englanders of the Revolutionary period. Born in Norwich, Connecticut, in 1724, he was one of those who took fire when George White-

¹ *Journal of the Convention*, 218. W. C. Webster, in *Annals Am. Acad. Pol. & Soc. Sci.*, ix. 387, notes that "a striking contrast between facts and pretensions" characterized the religious clauses in almost every revolutionary constitution.

² Town Records, ms. It will be understood that all references in the future to town returns will be to vols. CCLXXVI and CCLXXVII of the Mass. Archives, unless a different reference is made.

³ Suggested probably by Article XXXIII of the Maryland Declaration of Rights.

field, "like a live coal from God's own altar," swept through the colonies. In 1748 he became pastor of a Congregational church in Middleborough. Like many of the New Lights converted by Whitefield he turned Baptist; and under his influence Middleborough became the leading Baptist community in Massachusetts, with three churches and 400 members in 1784.¹ In 1772 he was elected Agent, or chief of the Warren Association, the annual meeting of Baptist church delegates in the state. From that time, and until his death in 1806, Backus was the principal exponent in Massachusetts of the separation of Church and State. Hardly a year passed without one or more pamphlets, newspaper communications, or petitions to the General Court on this subject appearing from his pen. He was also prolific in sermons on theological subjects, an industrious itinerant preacher, and the historian of his sect. In 1780, besides leading the attack on Article III of the Constitution, he travelled 1918 miles outside of his parish, preached 248 sermons, and employed what leisure remained on the second volume of his *History of New England, with particular reference to the Denomination of Christians called Baptists*. His memory has been kept green by his own town and sect; but no one of the four principal histories of New England and Massachusetts even mentions the name of this remarkable man, at once a worthy successor of Roger Williams, and a historian who ranks with Belknap and Minot.²

At the beginning of the Revolution the status of Baptists was regulated by a Province law of 1770. This act exempted them from religious taxes upon giving certificates to their town assessors, signed by their minister and three other Baptists, that they regularly and conscientiously attended Baptist worship.³ Though more tolerant than earlier legislation, this act

¹ List of Baptist churches in New England, in Backus, *Church History* (1784 ed.), II. 420. South Brimfield had the second largest number of Baptists in Massachusetts, and Boston was third, with 201 members. A Baptist revival was going on in the spring of 1780, eleven new churches being organized in the state. Cf. Backus's account of Middleborough, in *1 Collections*, III. 151.

² Alvah Hovey, *A Memoir of the Life and Times of the Rev. Isaac Backus*, A. M., Boston, 1858. Rev. Dennis B. Ford, *Historical Discourse on the Dedication of the Backus Monument at North Middleborough*, Boston, 1893. His Diary and Itineraries are preserved in the library of the Backus Historical Society, at Ford Hall, Boston.

³ Hovey, *Backus*, 180.

did nothing to relieve isolated Baptists who could attend no meeting of their denomination, nor did it fully protect against local tyranny and intolerance those who fully complied with the law. Three such were arrested for ministerial taxes in Chelmsford in January, 1773, and confined in Concord jail, although one was infirm, another the sole support of his family, and the third over eighty years old.¹ Some of the more conscientious brethren refused to fill out the exemption certificates required by law, deeming such an act "an implicit acknowledgment of a power assumed by man, which in reality belongs to God."² So Backus and his followers continued to fight for the

¹ Hovey, *Backus*, 183; Backus, *An Appeal to the Public for Religious Liberty, against the Oppression of the Present Day* (Boston, 1773), 42. For other cases of persecution, see Hovey, 184, 197-99, 218-20, and Backus, *Church History*, II, chap. xv.

² Backus, *Government and Liberty Described, and Ecclesiastical Tyranny Exposed* (Boston, 1778), p. 15.

There is a satirical poem on the subject in the *Independent Chronicle*, February 26, 1778:

"Religion should be well supported,
With arms and constables escorted;
Let *human* and *divine* be blended,
And priestly dignity extended.
Let hereticks no more presume,
To fault our *creed*, or read our doom: —

.

Let *prisons*, *halters*, *tests*, and *axes*,
Secure our Parsons yearly taxes: —
When once they cease to be extorted,
I'm sure the glory is departed.
Shall ev'ry clownish fellow chuse,
What priest he'll hear, what prayer he'll use?
And justify such independence?
And on his neighbours faith pass sentence?
If such refuse to bring the paper,
If *baptist*, *sep'ratist*, or *quaker*,
They quickly shall to prison caper.

.

Ye *Senators* both *wise* and *great*,
Who guard *religion* and the *state*;
Behold these hereticks increase!
Refuse to pay the goodly fleece,
To constable, to pope or priest.
Certificates they will not bring,
Nor with us pray, nor hear, nor sing,
They will blow in the house of rimmon,
Nor make the least submission — hang 'em;

principle of voluntary support, which had always prevailed by exception in Boston, and was finally adopted by Massachusetts, as well as every state in the Union.¹ He pointed out that the Baptists were being taxed without representation. He appealed to the sense of fairness of the orthodox clergy, who had unanimously denied the right of the British Government to tax New Englanders for the Anglican Church, quoting Chauncy's reply to Chandler: "It does not appear to us that God has entrusted the state with the right to make religious establishments."² But nations at war in defence of political or religious liberty are seldom tolerant to their own minorities. Mr. Backus's arguments were unanswerable, so he was accused of being a Tory.

All efforts to secure religious liberty from the General Court of Massachusetts being unavailing, Isaac Backus visited Philadelphia in September, 1774, in order to enlist the influence of the Continental Congress in behalf of his sect. On October 14 there was a memorable public conference in Carpenters' Hall, Philadelphia, between Backus, supported by a delegation of Rhode Island Baptists and Pennsylvania Quakers, and the Massachusetts delegates to Congress, John and Samuel Adams, Thomas Cushing, and Robert Treat Paine. A memorial of the Massachusetts Baptists, reciting their oppressions,³ was read, and a prominent Philadelphia Quaker remarked that the intolerance of Massachusetts was a bar to the union of the colonies. John Adams, suspecting a pacifist Quaker plot to discredit the radical Bay delegates, attempted to browbeat Mr. Backus, deprecated the Massachusetts establishment as

Teach them to sing the tune pecavi,
Or baste them well with wholesome gravy.
Describe the awful doom before 'em,
And to the mother-church restore 'em,
By malleus haereticorum.

PIERRE DE CASTELNAU.

¹ In his appeal to the General Court of December 2, 1774, Backus concludes: "If any ask what we would have, we answer: only allow us freely to enjoy the religious liberty that they do in Boston, and we ask no more." Hovey, 221. The Boston Churches were supported by assessments on pew owners only. The last clause of the first paragraph of Article III permitted this system to be adopted in any parish that so desired. The first outside Boston to do so was the Second Parish in Worcester, in 1785. Buck, *Mass. Eccl. Law*, 38-39.

² Hovey, 234.

³ *Ib.*, 204.

"a very slender one," and insinuated that all complaints came from enthusiasts and would-be martyrs. He characteristically told the exponents of religious liberty that they might as well expect a change in the solar system as in the ecclesiastical system of Massachusetts. Paine said there was nothing of conscience in the matter, it was only a contending about paying a little money. The conference closed by Adams and his colleagues promising to do what they could for the relief of the Baptists. They evidently considered their promise fulfilled by securing a resolve from the Provincial Congress at Cambridge, on December 9, 1774, inviting the Baptists to lay their grievances before the first regular legislature. Paine and Samuel Adams, it will be remembered, were on the committee that drafted Article III of the Declaration of Rights; and Backus accuses Paine and the other Adams of misrepresenting the purpose of his journey to Philadelphia, in order to discredit the Baptists in the Convention.¹

Joseph Hawley, the only political leader of Revolutionary Massachusetts whose religious views were broad and tolerant, made every effort to get a bill through the General Court to disestablish the Congregational churches, but could not get it to a vote. The old system continued; the constitutional Convention of 1779-80 proposed to make it fundamental law. Isaac Backus lost no time in attacking Article III of the Declaration of Rights. Within a week of its adoption by the Convention he fired the first gun of the campaign, a letter that appeared in the *Independent Chronicle* for December 2, 1779, and in pamphlet form.² In the spring after the Convention had adjourned, he published the only other pamphlet of the campaign; and in September the State Baptist Association issued the broadside petition, here reproduced in facsimile.³

¹ Hovey, chap. xv (based on Backus's diary), and pp. 221-23; Diary of John Adams in his *Works*, II. 397-400; *Independent Chronicle*, December 2, 1779; Backus, *Government and Liberty described*. The Baptist leader believed that Paine spread a report that he really went to Philadelphia in order to prevent a union of the Colonies. As judge of the Court of Common Pleas in 1792, Paine laughed out of court a member of Trinity Church, Lenox, who sought recovery of taxes assessed upon him for building a new meeting house in Pittsfield. *Berkshire Historical Collections*, I. 202.

² *Policy, as well as Honesty, forbids the use of Secular Force in Religious Affairs*. Boston, 1779, 26. Copy in Amer. Antiq. Society.

³ Hovey, 240-41. Backus's own account of the constitutional controversy will be found in his *Church History* (1784), II. 328-33.

To the General Court of the Massachusetts, assembled at Boston, Oct.

1780.

WE whose names are hereunto subscribed, inhabitants of this State, who are twenty-one years of age and above, of various religious denominations, enter our PROTEST against the power claimed in the third article of the declaration of Rights in the new plan of Government now introduced among us,---for the reasons following, viz.

First, Because it asserts a right in the people to give away a power they never had themselves ; for no man has a right to judge for others in religious matters ; yet this article would give the majority of each town and parish the exclusive right of covenanting for the rest with religious teachers and so of excluding the minority from the Liberty of choosing for themselves in that respect.

Second, Because this power is given entirely into the hands of men who vote only by virtue of *money* qualifications ; without any regard to the Church of Christ.

Third, Because said article contradicts itself ; for it promises *equal* protection of all sects, with an exemption from any subordination of one religious denomination to another ; when it is impossible for the majority of any community to govern in any affair, unless the minority are in subordination to them in that affair.

Fourth, Because by this article the civil power is called to judge whether persons can conveniently and conscientiously attend upon any teacher within their reach, and to oblige each one to support such teachers as may be contrary to his conscience ; which is subversive of the unalienable rights of conscience.

Fifth, Because, as the Convention say, " Power without any restraint is tyranny," which they explain as meaning the union of the Legislative, Executive, and Judicial Powers of government in the same hands ; and it is evident that these powers are all united in the Legislature, who by this article are empowered to compel both civil and religious Societies to make, what they shall judge to be, *suitable provision* for religious teachers " in all cases where *such provision* shall not be made voluntarily."

Before this, the controversy had got out of the hands of the Baptist leaders. The publication that seems to have had the greatest influence on the town meetings was a series of articles in the *Independent Chronicle*,¹ by a member of the Convention who signed himself "Philanthropos." The shrapnel of this gentleman's logic did much better execution than the old-fashioned round shots of the Rev. Isaac Backus. Beginning with the opening section of Article III, he pointed out that the Greeks and Romans had maintained very creditable civil governments without the aid of the orthodox "piety, religion and morality" of Massachusetts Bay. Not a clause of the article was left intact when he was through with it. Church and state had often been allied in the past, he pointed out, and the invariable result had been persecution by the civil authorities and spiritual decline. "Some persons will say, 'This writer means to set our churches all a-float.'" The Christian Church was very much afloat for three centuries after Christ, "and, thank God, floated to very good purpose." It was only after Christianity became a state religion that Christians began to persecute. If the New England orthodoxy cannot stand without state aid, the sooner it is set afloat the better.² And, not content with destructive criticism, Philanthropos proclaimed a positive principle of the relation of church and state — the principle that civil government has absolutely no right to intervene in religious affairs, whether by defining orthodoxy, punishing heresy, enforcing attendance at public worship, or taxing the citizens for its support. The following is his proposed substitute for Article III:

All men have a natural and unalienable right to worship Almighty God according to their own conscience and understanding; and no man ought, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry contrary to or against his own free will and consent. Nor can any man who acknowledges the being of a God be justly deprived of any civil right as a citizen, on account of his religious sentiments, or peculiar mode of religious worship. And that no authority can or ought to be vested in, or assumed by any power whatsoever, that shall in any case interfere with, or in any manner

¹ For March 2, 16, 23, April 6 and 13, 1780, and several later numbers.

² "Philanthropos," No. 5, in *Chronicle*, April 13, 1780.

controul the right of conscience in the free exercise of religious worship." ¹

The arguments of Philanthropos made a wide appeal. They are found in the returns of towns as widely scattered as Boston,² Framingham,³ Gorham (Maine),⁴ Granville,⁵ and New Providence in the northwest corner of the state. They were adopted alike in towns where Baptist influence was strong and in towns where a sufficiently liberal atmosphere prevailed among Congregationalists. At least two towns in Suffolk County, seven in Middlesex, six in Bristol, six in Worcester, and eight in Berkshire distinctly stated that their opposition to Article III was based on their belief that the interference of civil government in religious matters was contrary to the liberty of conscience and the Word of God. It was not until 1833 that enough voters adopted this viewpoint to supersede Article III by Amendment XI to the constitution, providing that religious societies might tax their members only with their express consent. Yet even the Amendment XI did not completely separate church and state in Massachusetts; nor, in the opinion of many, did the Amendment XVIII, forbidding public appropriations for sectarian schools. The time has not yet come when we can call the town of Gorham a false prophet for declaring, in its return of 1780, "It is now in the power of this state, and it may never be again, to prevent spiritual tyranny's taking place amongst us." ⁶

The defenders of compulsory religious taxation were not silent. Philanthropos and Mr. Backus were answered in the press by a member of the Convention who signed himself "Iraeneus." ⁷ He agreed with the member who remarked in the course of the debates, "If there is no law to support religion, farewell meeting-houses, farewell ministers, and farewell all

¹ "Philanthropos," No. 5, in *Chronicle*, April 6, 1780.

² Not by the town, but by the minority of 140 who refused to accept Article III, even as amended by the town committee. This minority protest is printed in the *Boston Gazette*, May 22, 1780.

³ Framingham sent in a copy of this protest, clipped from the *Gazette*, as conveying the objections of its minority.

⁴ *Ib.*, June 12, 1780.

⁵ Printed *infra*.

⁶ *Boston Gazette*, June 12, 1780.

⁷ *Chronicle*, February 10, 1780; *Continental Journal*, March 9, 23, April 6; *Independent Ledger*, April 17, 24, May 1, 8, 22, etc.

religions.”¹ The principles of Philanthropos, he tells us, tend to promote “impiety, irreligion, and licentiousness.” The opposition to Article III in the Convention was confined to “a certain junto, composed of disguised Tories, British emissaries, profane and licentious Deists, avaricious Worldlings, disaffected Sectaries, and furious blind bigots.” Liberty of Conscience, indeed! The principle of voluntary contribution to divine worship would “deprive a respectable part of the people of this state of the privilege of discharging their duty to God in a way that they judge to be most agreeable to his will.”² Many scriptural texts are found to authorize state aid, notably Isaiah xlix. 23: “and kings shall be thy nursing fathers, and their queens thy nursing mothers.” The most reasonable argument in favor of the principle of compulsory support was that of the Boston committee report.³ “Though we are not supporting the Kingdom of Christ, may we not be permitted to assist civil society by an adoption, and by the teaching of the best act of Morals that were ever offered to the World? . . . Suspend all provision for the inculcation of morality, religion and Piety, and confusion and every evil work may be justly dreaded; for it is found that with all the Restraints of Government enforced by Civil Law, the World is far from being as quiet an abode as might be wished.”

Arguments such as these, presumably, influenced the majority of the towns that voted for Article III. And a small group of towns voted against it because it was not strict enough. Abington, Northbridge, and four others objected because the Puritan Sabbath was not embalmed in the constitution. Dunstable found Article III so general “as to give protection to idolatrous worshippers of the Church of Rome”; and eight voters in Brookline wished to return to the system of the seventeenth century, when all dissenters’ estates were taxed for orthodox Congregational worship. Wilmington at first voted to confine liberty of conscience to Calvinists and Arminians, but thought better of it, and finally accepted the article as it stood.

In conclusion, Article III of the Declaration of Rights was

¹ *Independent Ledger*, April 17, and Supplement to *Continental Journal*, March 23.

² *Independent Ledger*, April 11, 1780.

³ *Boston Record Commissioners*, XXVI. 134. Samuel Eliot, William Tudor, and Perez Morton were on this committee.

opposed by three distinct classes of opinion: (1) by those who accepted the principle of state support to the churches, but who wished the equality of sects to be more clearly defined and secured; (2) by those who wished the support of religious worship to be wholly voluntary, as subsequently prescribed by Amendment XI to the constitution; and (3) by a few who desired a greater strictness or narrowness than Article III promised to afford.¹

4. RELIGIOUS QUALIFICATIONS FOR OFFICE.

Closely allied with the relation of church and state was that of the question of religious qualifications for office. Chapter II, section I, Article II of the Frame of Government required that the Governor "shall declare himself to be of the Christian religion." Chapter VI, Article I prescribed a declaration of belief in the Christian religion for persons chosen governor, lieutenant-governor, counsellor, senator, or representative, and every elected or appointed official was required to take an oath of office which included a declaration "that no foreign prince, person, prelate," etc., had "any jurisdiction . . . ecclesiastical, or spiritual, within this Commonwealth." This last oath does not appear in the John Adams draft, and was added by the Convention expressly in order to exclude ultramontane Catholics from office.² A great many towns, however, deemed it insufficient for that purpose; and a very common demand on their part was the addition of the word "Protestant" at some or all places in the constitution when the word "Christian" was mentioned. At least forty towns in Worcester and Hampshire counties voted to have this qualification added in Section I, Article II, or in Chapter VI, Article I, or in both places;³ some even wished the "protection of the law" denied

¹ See *infra*, p. 411, the tabulation of the vote on Article III by counties, and a map of the vote by towns.

² Address of the Convention, *Journal*, 221. Cf. the oaths and tests required by other revolutionary constitutions (*Annals of Am. Acad. Pol. & Soc. Sci.*, ix, 3, 89).

³ I have not tabulated the votes on this question, but suspect that more than a third of the voters were in favor of the governor, at least, being Protestant. There were probably not two hundred Catholics in the state in 1780. The first Roman Catholic governor of Massachusetts was the Hon. David Ignatius Walsh, elected in 1913.

to all but Protestants (Article III, last paragraph). Lexington sent in a long historical argument, with citations from Robertson's *Charles V*, against admitting Catholics to office; and Roxbury voted to have the word "Christian" qualified by "Protestant" wherever it appears in the constitution. "This seems to us necessary to secure the peace and tranquillity of the state, as well as to the promotion of that Religion which our venerable forefathers suffered everything but death, to establish." These Protestant principles of the towns were not justified by subsequent history, for Amendments VI and VII swept all religious tests and qualifications out of the constitution in 1821.

5. OTHER ARTICLES OF THE DECLARATION OF RIGHTS.

There was very little objection from the towns to any other article of the Declaration of Rights except Article XVI, on the freedom of the press, and Article XXIX, on the tenure of judges. John Adams' original draft for Article XVI was badly emasculated by the Convention.¹ Boston town-meeting committed the result to three prominent members of the Convention, John Lowell, Ellis Gray, and Nathaniel Appleton. The substitute they reported was accepted by the town: "The Liberty of Speech and of the Press with respect to Publick men and their Publick Conduct and Publick Measures is essential to the Security of the Freedom of a State, and shall not therefore be restrained in this Commonwealth."² If this substitute had been adopted by the Convention, the state might have been spared some of its political libel suits during the Federalist period.

That part of Article XXIX which adopts the principle of permanent tenure and salary to the judges of the Supreme Judicial Court, was objected to by a number of towns, especially in the western part of the state and the Old Colony. "We don't see that it is any Right or advantage for Officers to be so Independent as there expressed, but a disadvantage," said Sutton. The annual granting or withholding of salaries had been the favorite method of bringing political pressure to bear

¹ *Works of John Adams*, IV. 227.

² *Boston Record Commissioners*, XXVI. 127, 128. Milton, Eastham, Westford, and a few other towns took similar action.

on the judiciary during the Provincial period, and the objectors saw no reason why they should give up this privilege. They also desired that annual, quinquennial, or septennial terms be substituted for tenure during good behavior. Shelburne wished the judges to be appointed annually by the legislature, and Adams, Shutesbury, and Wilbraham voted for annual election by the people. But the dissenters to Article XXIX were in a small minority.

Four or five towns demanded additional articles in the Declaration of Rights, such as continuing the usual method of selecting juries, and guaranteeing the free use of the Bible (Charlton). Petersham proffers the unique criticism that no effectual provision is made against the slave trade. But on the whole, the Declaration of Rights, apart from Article III, was the most popular part of the constitution.

6. SEPARATION OF POWERS, OR LEGISLATIVE SUPREMACY.

It cannot be too often insisted upon that the American people during the Revolution were steeped in the negative political theory of natural rights. The people, the source of all power, must delegate only so much of it as is necessary for the preservation of life, liberty, and property. The tendency of rulers to tyrannize is the greatest danger to guard against. Locke, the colonists' political Bible, encouraged a trust in legislatures rather than executives. "The first and fundamental positive law of all commonwealths is the establishment of the legislative power." "In a constituted commonwealth . . . there can be but one supreme power, which is the legislative, to which all the rest are and must be subordinate."¹ So far as Massachusetts was concerned, this theory of legislative supremacy was justified by popular experience. During the Provincial period the House of Representatives had been the bulwark of colonial liberties against the royal executive; and it was only natural to wish to entrust power to a body, every member of which was elected in town meeting and subject to its instructions.

All the earlier revolutionary state constitutions reflected this prejudice in favor of the legislature. From a modern stand-

¹ *Second Treatise of Government*, chaps. xi and xiii.

point the Governor of Massachusetts seems unnecessarily checked and hampered. Yet John Hancock, in 1780, was the most powerful executive official on the continent. Pennsylvania had no governor, and in the other states which had adopted constitutions he was the creature of the legislature, elected by it in all save three, limited by some council or other body as to all his functions, having little appointive power and no veto whatsoever. The comparatively strong and independent position granted the Governor of Massachusetts by the constitution was the result of revolutionary experience with a government of the popular sort.

The practical politicians responsible for the constitution had learned much from the workings of Congress and the provisional state government.¹ Adams, Lowell, and Parsons were still fairly apprehensive of tyranny; but they were much more fearful of unrestrained democracy and anarchy, and most impatient of legislative inefficiency. "Vigor and despatch" was their favorite phrase. Hence, in the Massachusetts constitution, they substituted for legislative supremacy a bicameral legislature, a strong executive, and an independent judiciary, all duly separated and balanced. These fundamental principles were imposed on the Convention by John Adams and the future Essex Junto (Parsons, Lowell, Jackson, and Cabot) with some difficulty;² but the Convention seems to have been thoroughly converted. Its Address to its Constituents was an effort to turn the people at large from their habits of political thought; to persuade others that a separation of powers, and "checks and balances" would not only prevent tyranny, but promote governmental efficiency. The Address is a clear, succinct exposition of the same school of political thought that produced the Essex Result, the Federal Constitution, and the Federalist.

The Address did its work well. There is no doubt that a two-thirds majority was procured for the frame of govern-

¹ Which was practically a unicameral legislature. The House of Representatives elected the Council, which acted as upper house and executive board. The judges and other officials were appointed by joint ballot.

² Harry A. Cushing, *Transition*, 233-35; 235, note 3. The Address has been reprinted, I believe, only once, in the *Journal of the Convention*, 216-21. It was drafted by a committee of seven, of which Samuel Adams, Theophilus Parsons, John Lowell, and James Sullivan were the most prominent members.

ment.¹ But the popular attachment to legislative supremacy, and suspicion of judicial and executive power, frequently crop out in the town returns. Rehoboth wants a government "similar to Hon. Continental Congress"; i. e., the Senate, the Executive, and all but the local officials to be elected by the House. Athol and Warwick work out in detail a scheme similar to the then existing government of Massachusetts: a unicameral legislature to elect a council of sixteen, to exercise most of the powers granted by the constitution to the Governor and Council, except the veto. Middleborough predicts that if the people are not allowed to elect all their officials, they will "groan under a government of the most venal and wretched set of villains." The veto power, to Oakham, smacks of monarchy; and Wilbraham, with unconscious sarcasm, urges "that the Chief Executive ought to be excluded a voice in Legislature as much as the Supream Judicial Judges." Westhampton points out the danger of letting the Governor appoint the officers of garrisons and of forts where munitions of war will be stored, as well as command the officers he appoints; for "wee may at some time be so unhappy as to have a Governor who may not ame at the Good of the Commonwealth." Pownalborough (Wiscasset, Me.) frankly prefers the existing form of government, "which the country was used to, and answered the Purposes both of internal Government and carrying on the war." Freetown is of the same opinion, and Swansea deems the old Province form "more pleasing to the People in General, and Particular to the Inhabitants of the Town Swanzey."

These demands for a unicameral legislature and plural executive were not due simply to prejudice and inertia, but to a suspicion, which was only too well founded, that the system of checks and balances would be used to defeat the popular will. Whether the old way would have been best after all is questionable; but the town of Newton suggested to the constitutional Convention of 1780 a new way, which will be the principal issue of the next constitutional Convention — the referendum: "That in case any Act of the General Court, as aforesaid, shall be adjudged by the People to be oppressive or contrary to their Freedom or Privileges, upon the application of the Selectmen of any Seven Towns of the Commonwealth, the Gen-

¹ Except Chapter VI, Article x, which does not properly belong to it.

eral Court shall issue Precepts to the several Towns and to the Assessors or Committees of the corporated Plantations, to convene the qualified Voters in their respective Towns and Plantations for the purpose of considering the said Law; — and if it shall appear that a majority of the People so assembled, shall be against the said Law, it shall be no longer in force.”¹

Wilbraham, in the dignified conclusion to its return, sums up the protest of all who clung to legislative supremacy:

“Hon^d Sir, — We have stated our Objections and Given our Reasons. On the Whole, it appears to us that the Constitution in its Present form is Rather too Arbitrary. The People are now contending for Freedom — and we heartily wish they might not only obtain it — but keep it in their own Hands.”

7. THE HOUSE OF REPRESENTATIVES.

No two subjects gave the Convention so much trouble as the basis of representation, and the organization of the House of Representatives. The problem was a three-cornered one; to reconcile the desire of the smallest town to send at least one member, with the right of the largest to have a proportional share, and yet keep the total number within a reasonable limit. Representation down to 1776 was regulated by a law of 1692, which allowed every town to send at least one representative, a town containing 120 voters to send two, and Boston to send four. The protests of the larger towns produced a new act on May 4, 1776, which gave towns an additional representative for every 100 voters over 220. This brought the House up to the unwieldy number of 260, double the largest Provincial House, and far too large for the Old State House.² We manage to get along today with a House of 240 members, although the state has more than ten-fold its population of 1776. The constitution of 1778 attempted to bring down the number by impairing the principle of equality, providing (Article vi) that the mean increasing number entitling a town to more than one representative should itself be increased by twenty for each additional representative. This was properly criticised in a

¹ Mass. Archives, CCLXXVII. f. 22. Offered as an amendment to Chapter I, Section I, Article II.

² Cushing, *Transition*, 203; James Savage, *Constitution of Mass.*, 6.

pamphlet more frequently extolled than read, the *Essex Result* of 1778,¹ which proposed to substitute a marvellously complicated system of filtering the representation through a series of county conventions, so that the total strength of the House would not exceed 100.²

The system adopted by the Convention of 1779-80 sacrificed size to equality. It differed only from the Act of May 4, 1776, in making ratable polls (freemen over sixteen with certain exemptions) the unit, instead of the number of voters. Every existing town having 150 or less ratable polls may elect one representative, and one more for every 225 additional ratable polls. No new town to be incorporated until it has at least 150.

The population of Massachusetts and the number of towns, especially in Maine, were increasing so fast that this ratio produced a very unwieldy House. As the General Court refused until 1811 to pay salaries to its members, the number was less than it might have been, but unequally distributed. "At one time the local interest, upon which great excitement was felt in Berkshire, which is equal to little more than a twentieth of the state, brings in here four times its just ratio of members, if the residue be counted. Six or eight sessions after, the troops of Bristol outnumber all those West of Middlesex."³ An Act of 1811, paying representatives out of the public treasury, brought the total number the next session over seven hundred, or one for every thousand people. A similar ratio of representatives to population today would give us a House 3700 strong.

It was not hard, then, for the towns to pick flaws in Chapter I, Section III, Article II. Criticism was particularly rife in the west. The favorite objection in Worcester, Hampshire, and Berkshire was the unwieldy size of the House; the favorite remedy, the old system of 1692. Let every town have one member, a limited number two, and Boston four. Towns with two or three hundred souls demanded one quarter the weight

¹ *Result of the Convention of Delegates holden at Ipswich in the County of Essex, who were Deputed to take into consideration the Constitution and Form of Government proposed by the Convention of the State of Massachusetts-Bay.* Newburyport, 1778. It is reprinted in *Memoir of Theophilus Parsons*, 359.

² *Ib.*, 390.

³ Savage, *Constitution of Mass.*, 11.

of Boston, with ten thousand. A few communities were frank enough to reveal what the west really wanted — to fortify the agrarian against the mercantile interests of the seaboard. Greenwich said that “the Landage (*sic*) Intrest have not a Proper Weight,” and Washington, that the inland towns ought to have the same number as the “Marchantile Towns.”

Yet many fair and reasonable amendments were offered by the western towns. Some proposed to reduce the House by adopting a larger mean increasing number, which was done by Amendments XII (1836) and XIII (1840). Others wished to place the burden of representatives' salaries on the “public chest,” not the towns; which was distinctly permitted by Amendment xxxv (1893). Mendon, Spencer, Sutton, and Bridgewater had the wisdom to suggest the basis of our final solution adopted in 1857 (Amendment XXI) — to divide the whole state into representative districts of equal voting strength.

The west also showed great dissatisfaction with the low quorum (sixty members) prescribed by Chapter I, Section III, Article IX. Boston alone was entitled to sixty representatives in the Eighteen-thirties. Four towns in Worcester County and two in Hampshire proposed the exact figure — 100 members — adopted by Amendment XXI in 1857; while Leverett looked III years ahead to Amendment XXXIII, “A majority of the members . . . shall constitute a quorum.”¹

The return of Worcester (printed below) gives the deliberate voice of western Massachusetts on this question of representation. Failure of the Convention to heed their demands, reasonable as well as unreasonable, was one cause of Shays' Rebellion.

8. THE SENATE AND COUNCIL.

The sections of the constitution on the Senate and Council (Chapter I, Section II, and Chapter II, Section III), were a clumsy compromise between the Province system and the new principle of the separation of powers. Under the Province

¹ The constitution of 1778 also adopted 60 as the quorum for the House. The Essex Result said of this, “We stand amazed, and are sorry that any well disposed Americans were so inattentive to the consequences of such an arrangement.” *Memoir of Theophilus Parsons*, 385.

Charter, the General Court annually chose a Council of 28, which acted both as upper house of the legislature and executive council. The constitution provided that the people should annually elect forty "persons to be councillors and senators." At the first annual session of the General Court, nine of these were elected by the Senate and House on joint ballot to form the Governor's Council;¹ the remainder constituted the Senate. In other words, the legislative functions of the old Provincial Council were assigned to the Senate, the executive functions to the Governor's Council. The forty Senators and Councillors were apportioned among not less than thirteen senatorial districts, in proportion to the state tax paid by each. As the Convention's Address to its Constituents explained, "The House of Representatives is intended as the Representative of the Persons, and the Senate of the property of the Commonwealth."² The Senate of Massachusetts was created in order to protect property against democracy.

The towns which objected to this fundamental principle of our constitution demanded a unicameral legislature. Many that accepted the principle (including at least sixteen towns in Hampshire, and Worcester counties and six or eight elsewhere) insisted that the number of Councillors and Senators was too large. Several proposed the old figure, 28; and Southborough and a few others did not see why the same body could not continue to exercise both its former functions. The object of these remonstrants seems to have been simply to save expense.

9. THE FRANCHISE.

One of the least popular features of the constitution was the property qualification for voters. No man could vote for governor, senator or representative, unless the owner of a freehold estate within the Commonwealth of the annual value

¹ If any Councillor elect refused to serve, as most of them did when party feeling became intense, he could remain in the Senate, and any citizen of the state could be elected Councillor by the General Court to fill the vacancy.

² *Journal of the Convention*, 218. The Essex Result has a long and interesting argument in favor of this principle. "The legislative body should be so constructed, that every law affecting property, shall have the consent of those who hold a majority of the property." *Memoir of Theophilus Parsons*, 376. Amendment XIII (1840) destroyed this system by apportioning the Senators according to population, and abolishing the property qualification for the position.

of three pounds, or any estate of the value of sixty pounds.¹ This qualification was fifty per cent higher than that of the Province Charter. The Convention's Address defended it on the ground that all citizens not so qualified "are either those who live upon a part of a Paternal estate, expecting the Fee thereof, who are just entering into business, or those whose Idleness of Life and profligacy of manners will forever bar them from acquiring and possessing Property . . . men who will pay less regard to the Rights of Property because they have nothing to lose."²

In spite of this gratuitous insult to the unpropertied classes, who had a right to vote on the constitution, the articles in question secured more than a two-thirds majority. An important section of the people formally consented to its own disfranchisement. Only a small minority vigorously dissented. Several towns protested against property qualification for any electorate. Stoughton insisted "The right of election is not only a civil; but it is a natural right, which ought to be considered as a principle corner stone in the foundation for the frame of Government to stand on." The remonstrants differed as to the exact qualification they would substitute. Some wished all resident adult male taxpayers to vote; others would require the selectmen to furnish a certificate of sobriety in life and conversation to prospective voters. Douglas asked that "all rational men above twenty-one years of age should have the privilege of voting for Governor, Senators, and Representatives; otherwise, all men cannot be said to be born free and equal."³

Many towns accepted a propertied electorate for the Governor and Senate, but strenuously opposed a similar qualification for voting for Representatives.⁴ The distinction was apt, for the

¹ Chapter VI, Article III provided that all sums of money mentioned in the Constitution should be computed in silver, at 6s. 8d. per ounce. The currency mentioned was not sterling, but the theoretical standard of the New England colonies, "lawful money," six shillings of which were equivalent to one silver dollar. Three pounds, therefore, equalled ten dollars specie.

² *Journal of the Convention*, 218.

³ Cf. return of Boxford, *infra*, p. 403.

⁴ The rejected constitution of 1778 had the same qualification as that of 1780 for voting for Governor and Senators; but "every male inhabitant of any town in this state, being free and twenty-one years of age, excepting Negroes, Indians and mulattoes, shall be entitled to vote for a Representative." (Article v.) Even the *Essex Result* proposed male suffrage for Representatives.

House was supposed to represent the persons, and the Senate the property of the state; and all men above sixteen years were liable to taxation. The most lengthy and eloquent remonstrance on this subject came from the Northampton town meeting, influenced probably by the liberal genius of Joseph Hawley. Northampton does not "object a word against the owners of property choosing one entire branch of the legislature. . . . But pray, Gentlemen, shall not the polls, the persons of the state, have some weight also . . . ?"¹ The ancient and wealthy town of Dorchester proposed unanimously "That every Person that is free and 21 years of age vote for a Representative, having estate or not." Its argument in favor of this amendment follows:

This Amendment was made upon the strongest Persuasion that the Article as proposed by the Convention, infringes upon the Rights and Liberties of a number of usefull and respectable members of Society; which number we believe is daily increasing and possibly may increase in such proportion that one half the People of this Commonwealth will have no Choice in any Branch of the General Court, and who are at the same time liable (by the 4th Article of Chapter 1st, Section first) to pay such a proportion of the Publick Taxes as they should Judge reasonable; and the members of the said Court being all men of Considerable Property, may be induced to lay too great a proportion on the Polls, and by that means ease their Estates and bring a heavy burden on those who have no power to remove it. And being fully convinced that Taxation and Representation ought to be inseparable, and that the Property and Estates of the People will be sufficiently guarded by the Senate who represent the same, we see no Reason of sufficient weight to Debar any Person Qualified as in the article amended provides, from Voting in Choice of Representatives.

Dorchester's and Northampton's prophecy that a greater proportion of taxation would be placed on the polls, turned out to be correct. The proportion of the state tax raised by poll taxes rose from 30 per cent in 1778 to 40 per cent in 1786 — one of the many acts of injustice that helped bring on Shays' Rebellion.²

¹ Northampton's return on this subject is printed *infra*, p. 408.

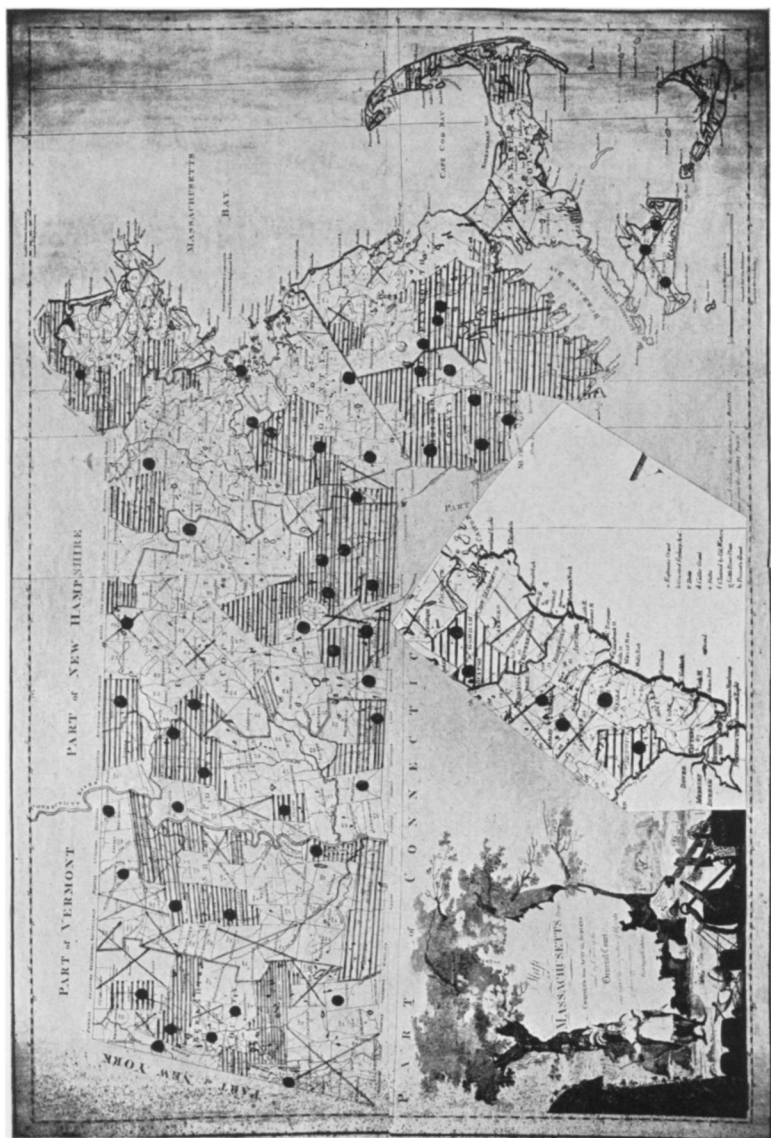
² Dr. H. H. Burbank, *The General Property Tax in Mass., 1775-1792* (MS. thesis in Harvard College Library).

A few towns protested against the property qualification for holding the principal elective offices, and the power given the General Court by Chapter VI, Article III, to raise, but not to lower, these qualifications. Petersham insisted that "Riches and Dignity neither make the head wiser nor the heart better. The overgrown Rich we think the most Dangerous to the Liberties of a Free State, and we object against a Discretionary power in the General Court to alter such Qualifications in Future." Groton pointed out that this last power might result in requiring so large a property for a representative that some towns would have no qualified resident to elect.

10. THE JUDICIARY.

A number of towns expressed their dislike of an independent judiciary by voting against Article XXIX of the Declaration of Rights, or by demanding elsewhere that judges be elected by the House of Representatives or the people. Others, especially in the three western counties, directed their objections against various articles in Chapter III. Southwick and four other towns in Hampshire County; Léominster and Douglas in Worcester County; and Barnstable, wished the Justices of the Peace elected by the people.¹ New Braintree and three other Worcester towns, and Pelham and Colrain wished the Justices of the Peace commissioned by the Governor (by the House, said Dudley), on the nomination of the towns. Two or three proposed that sheriffs be similarly elected. Very popular in the west was an amendment to the effect that a Judge of Probate be elected by, and a registry of deeds located in, every town, in order to save the trouble and expense of recording wills and land titles at the county seat. Seventeen towns in the western counties, and at least seven in the rest of the state, made one or both of these demands. They were not new; in 1776 they had provoked John Adams' outburst regarding wild innovations (in the same week that he served on the committee that drafted the Declaration of Independence): "The projects of county assemblies, town registers, and town probates of wills are founded in narrow notions, sordid stinginess, and profound

¹ Pittsfield demanded this as early as December, 1775, and repeated the demand in the instructions to its delegate at the Convention.



VOTE ON ARTICLE III OF THE DECLARATION OF RIGHTS, 1780.

Blank — Towns that voted in favor.

Shaded — Towns that voted against.

● — Baptist Churches in 1780.

☒ — Towns from which no expression of opinion has been obtainable (unorganized in 1780; took no action; records destroyed; return ambiguous or made too late; no return in archives and no information obtainable from town clerk).

ignorance, and tend directly to barbarism.”¹ Ten years later, they were fighting issues in a portion of the state that John Adams represented.

II. AMENDMENT OF THE CONSTITUTION.

No provision for future amendment of the constitution was contained in John Adams' draft. A committee appointed by the Convention² to consider the subject reported, on March 1, in favor of holding a new constitutional convention in 1800. The Convention amended this report by adding the clause, "If it shall appear that a majority of the *whole numbers of the inhabitants* shall be in favor of such a revision." This would have prevented a new convention as effectually as the recall of a Mayor of Boston is prevented today. The attention of Messrs. Sullivan, Paine, Parsons, and Lowell being called to this "joker," they secured a reconsideration, and the article was recommitted to Dr. Jarvis of Boston, Rev. Jason Haven of Dedham, and Judge David Sewall of York. Their report was adopted as Article x of Chapter VI. In the year 1795 the "qualified voters" will consider the question of calling a new convention, which shall be held if two-thirds of those voting are in favor.³

This article received the least favorable vote in the town meetings of any part of the Frame of Government, in spite of its place at the very end of the constitution. Opposition was confined to no particular section. "We think a convention ought to be made certain in the year 1795," said Roxbury, "in order that mistakes and errors which the wisest Bodies of Men are liable to, may be rectified and corrected; and if it should be necessary, that the people might recur to the first principles in a Regular Way, without hazarding a Revolution in the Government." But almost every town had a different amendment to propose. Some wished a convention summoned

¹ 5 *Collections*, iv. 310. Yet these projects prevailed in Connecticut. Every town clerk's office in that colony and state was a registry of deeds, and there were 28 Courts of Probate, which could be held in any one of the towns that composed the district. *Acts and Laws of the State of Connecticut* (1796), 132, 416.

² February 24, 1780; *Journal of the Convention*, 134. Its members were Samuel Adams, Dr. Charles Jarvis, and Walter Spooner of Dartmouth.

³ *Journal of the Convention*, 156, 159, 161, 162; letter of Dr. William Gordon in the *Independent Chronicle*, June 8, 1780.

earlier than 1795; others proposed to take a vote on the question within five, seven, or ten years. Chesterfield wished the town meetings to exercise a power similar to that of the Council of Censors in Vermont; Andover desired the same broad electorate of 1779 and 1780 to vote on the constitutional question in 1795.¹ Bellingham demanded a requirement that every ten years the people should choose delegates to a constitutional convention to meet at Concord on the last Wednesday in September at 10 A.M. Dr. William Gordon, in a letter to the *Independent Chronicle*,² stated that he would favor the constitution, in spite of its defects, were a revision only certain in 1795. The tabulation of the vote on this article suggests that a strong minority of the people agreed with him.

12. MISCELLANEOUS OBJECTIONS.

The main features of the constitution that met with opposition from the towns have been stated. A few others, not so essential, provoked more or less dissent. Seven towns in Berkshire, fourteen in Hampshire, and four elsewhere wished the captains and subalterns of the militia elected by all members of their companies, or by those sixteen years of age and over, instead of simply by the adult members, as prescribed by Chapter II, Section I, Article x. "Youths will be more tractable under officers of their own choice," explained Douglas. The popular demand for such an alteration evidently increased, for it was adopted as Amendment v in 1821. Newburyport and three towns in southwestern Maine (York, Wells, and Biddeford) proposed an amendment in the better direction, that all militia officers be appointed by the Governor, to avoid company politics.³ They also argued in favor of giving the Governor a full veto, as the "sole representative of the whole Commonwealth" against local and special interests.

A Boston committee consisting of John Lowell, Ellis Gray, and Nathaniel Appleton reported, and the town adopted, an amendment to Chapter VI, Article VII, on the writ of Habeas Corpus. In their opinion this safeguard of personal liberty

¹ MS. town records. Scituate, Acton, and Lexington concurred.

² May 4, 1780.

³ Pittsfield had proposed the principle of the popular amendment in December, 1775; the Essex Result was in favor of appointment by the Governor.

should only be suspended in time of war, invasion, or rebellion, and then for no longer than six months.¹ About twenty towns, all of them east of the Connecticut River, followed Boston's suggestion.

Nearly the same number wished ministers of the gospel, and all others exempted from paying the poll tax, included among those disqualified for election to the General Court by Chapter VI, Article III. Westhampton declared, "We humbly conceive that it is no more agreeable to the Scripture for a Minister of the Gospel to become a minister of State than it were for king Uziah to burn incense at the altar. Besides, wee might ad that it is not Consistant with freedom and Liberty for a Legislator to lay a tax on us in which he doth not tax him self, which is truly the case with regard to ministers, provided they pay no rates."

Rotation in office is not a principle we expect to find favored by citizens of wealth and substance. Yet Samuel Eliot and William Tudor were members of the Boston committee that proposed a five-year term for the Commissary General, "because it was apprehended that a change or rotation² was necessary in general to the Preservation of Freedom. Persons long in Office are apt to lose that sense of Dependence upon the People, which is essential to keep them within the Line of Duty to the Publick." Several towns followed Boston, as usual; and Middleborough suggested that no one hold office under the constitution for more than three years out of every five.

"No Body of Men has a Rite to Levy any Duty or Excise on the Produce of the Country or Manufactory of the Country Whatsoever," insisted the 38 voters of Washington, Berkshire County, in criticism of a power accorded the General Court in Chapter I, Section I, Article IV. This typical demand of western agrarianism was first suggested in 1780 by Cambridge town meeting.³

¹ *Boston Record Commissioners*, xxvi. 128.

² *Ib.*, 133, state "relation." Obviously a printer's error. Such limitations were usual in the revolutionary state constitutions.

³ Mass. Archives, CCLXXVII. f. 5. Cambridge polled only three more votes than Washington. Worcester, Petersham, Leverett, Tyngham, and Freetown also voted against taxing produce, etc.; and an unpopular excise was one of the prominent complaints in 1786.

John Adams' favorite Chapter V, Section II, on "The Encouragement of Literature, etc.," did not wholly escape criticism. Sutton hoped it did not continue the ancient obligation for towns of a certain size to maintain grammar schools, which have proved "rather a stagnation to the learning of Youth than any preservation of it."

Petersham thought it "too much to give the Corporation of the University at Cambridge a Section of our Constitution. We are of the mind that it might with safety be left to the care of the Legislature and that it may be possible that the Legislature may find it necessary to Curtail that Rich and Growing Corporation lest it should Endanger the Liberties of the Commonwealth." But this corporation continued to grow to such good purpose that a century and a quarter later it acquired about 2000 acres of Petersham — the Harvard Forest. Another town inquired why, if the constitution protects the rights of the citizens, should Harvard College have special attention. West Springfield and Georgetown, Maine, demanded that other than Congregational ministers be elected to the Board of Overseers. New Salem objected to the professors and students being exempt from the poll tax. Bellingham proposed that the treasurer of the corporation publish an annual account of the funds and income of the college. This would have been most embarrassing to the late treasurer of the College, and first Governor of the Commonwealth.

III. THE FOURTH SESSION OF THE CONVENTION.

JUNE 7-16, 1780.

I. THE TABULATION OF RETURNS.

The Constitutional Convention met for its fourth and last session in the meeting-house of the Brattle Street Church in Boston, on June 7, 1780. The journal records that twenty-seven new members took their seats, but no hint is given as to the total strength at this session.

A resolve of the Convention on March 2 had recommended the people to empower their delegates, at this final session, to agree upon a time when the constitution should go into effect, provided two-thirds of those voting accept it; otherwise, to

conform the constitution to the sentiment of two-thirds.¹ This authorization is omitted from perhaps half the town returns; but we may assume that it was given verbally to the other delegates. At any rate, the Convention proceeded at once to appoint a committee "to revise and arrange" the returns.² Whether intentional or not, the choice of the verb *revise* in preference to *canvass* or *tabulate* was well made.

Of the difficulty of correctly tabulating the town returns, varying as they did in form and substance, no one can have a keener appreciation than myself. Many are so obscurely worded as to defy analysis, and much painstaking labor is required to copy all the votes, where the returns are full and clear. One would expect to find a certain number of honest errors. But the committee adopted at the start such principles of counting that a two-thirds majority for every article was assured in advance.³

A number of objecting towns, apparently regarding themselves distinct bodies politic in their relation to the state, passed a vote to the effect that they would accept the constitution without their favorite amendments if two-thirds of the people so voted. Such action was wholly superfluous, being merely a promise to submit to the will of the majority.⁴ The Convention certainly did not contemplate leaving outside the Commonwealth any town whose objections were not incorporated in the constitution. Yet the total number of votes for and against such a resolution, where it was made, were re-

¹ *Supra*, p. 362.

² *Journal of the Convention*, 170. The committee originally consisted of five members, but it was added to during the next few days, as the difficulty of the tabulation developed, until its total strength was 32 or 33. Eight were from Suffolk County, six each from Essex and Middlesex, two each from Hampshire, Worcester, Bristol, Plymouth, and York, and one each from Barnstable and Cumberland. Members from towns which voted against Article III of the Declaration of Rights, and Chapter VI, Article x, were included, though in a minority. George Cabot, Increase Sumner, and James Sullivan were the most prominent members of the committee.

³ Unfortunately none of the more important committee reports alluded to by the journal of this session have been preserved. But in the same volumes with the town returns in the Mass. Archives are the original tabulations of the returns for all counties but two. From these, and from the preliminary report in the printed Journal, p. 172, and the "specimens" given on p. 176, it is possible to deduce the methods adopted by the committee.

⁴ Such a vote was, however, urged by "Philopatrise" in the *Boston Gazette*, April 17, 1780.

corded in a separate column of the tabulation,¹ and added in with the total vote in favor of the constitution as it stood.²

Many, perhaps a majority of the towns, took no direct vote on such articles of the constitution as they objected to. After recording its objection, the meeting would appoint a committee to report an amended or substitute article, and vote on that. Obviously the affirmative side at least of such a vote should have been recorded against the original article. If a town voted 59 to 16 in favor of a new Article III, separating church and state, the 59 votes should have been added to those against Article III as it stood. Yet the committee, in some of its county tabulations, maintained one column for the yeas and nays on every article, and a separate column for the yeas and nays on "ditto amended." In other county tabulations these were thrown out altogether, or counted as if they had been taken on the original article.³ The result was, that in computing the vote for a given article the returns of practically all the towns that opposed it were either counted in favor of it

¹ Groton, for instance, voted "that although the amendments proposed by the town appear to them to be of importance, yet as a Revision is soon to take place, this Town agrees that if two thirds of the male Inhabitants of this State qualified to vote on this subject, and who have assembled in Town Meeting including the Inhabitants of this Town voting herefor, shall agree to accept the Form of Government as compiled by the Convention, that in such Case the Convention shall appoint the time and provide measures for carrying the same into full exercise. Passed in the affirmative sixty nine against sixty Two." In the tabulation this vote is entered in a separate column headed "In case amendments do not take place," in which are also entered the votes of all towns approving the whole constitution as it stood. Mass. Archives, CCLXXVII. ff. 14, 123.

² This statement is warranted, I think, by the preliminary report made by the committee on June 8, on the return of 76 towns, not specified. "That in those Returns they find the number of Persons present and voting is 5776; — That the Number in favour [of] the Constitution without Amendments, and of such Constitution as two thirds of the persons voting thro' the State shall agree to, or the Convention shall form agreeably to the Sentiment of two thirds, even though the Amendments proposed should not be obtained, they find to be 4564, — but that several towns have returned their acceptance of the Constitution with certain amendments and have not determined whether they would accept it in case their proposed amendments did not obtain, upon which they desire the opinion of the Convention, whether they may take the sense of those towns from their delegates . . ." The Convention refused this desired permission to the committee. *Journal of the Convention*, 172, 173.

³ In the Hampshire County tabulation, for instance, the votes of South Brimfield, Chesterfield, Hatfield, Monson, Shelburn, Shutesbury, Southwick, Warwick, and West Springfield in favor of an amended Article III, are counted in favor of Article III as it stood.

or not counted at all.¹ No wonder, then, there appeared to be a two-thirds majority in favor of every article.²

2. THE RATIFICATION OF THE CONSTITUTION.

From June 8 to 15 little business was done by the Convention, while the committee was preparing its final report. This was submitted on the morning of the 15th. At the afternoon session the articles of the constitution were read in order, "and the following question put upon each, viz.: Is it your opinion that the people have accepted of this article? Which, upon every individual article, passed in the affirmative by a very great majority."

It was then voted "that the People of the State of Massachusetts Bay have accepted of the Constitution as it stood in the printed form, submitted to their revision by the Resolves of 2nd March last."³

¹ An extract from the specimen schedule submitted on June 12 (*Journal*, 176), will make this method clear:

Counties	In favor if amended		D ^o if the amendments do not obtain		3rd Article Dec. Rights		D ^o if am'n'd	
	pro	con						
Essex	49		1408	8	922	287	448	26

Harry A. Cushing, *Transition*, 274, says that the committee "were able to report the vote of 5654 for the Constitution, and 2047 against it." No such report was made, and the references Dr. Cushing gives for this statement show that he obtained these figures from the report of a committee of the House of Representatives on the vote on the question of calling a Convention, in the spring of 1779. Cf. *supra*, p. 246. Attention is called to this misstatement in a work otherwise valuable, as it has already misled other authorities.

² In addition, there are mistakes in the official tabulations too numerous to mention. For instance, the column for Chapter VI, Article x, in the Hampshire County tabulation is left blank in the space for the towns of Shutesbury, Greenwich, and Granby, all three of which voted against it. There is also a discrepancy between the number of returns reported and the number found in the Archives. The latter number is 188. This does not include the 15 returns (at least) from Essex County included in the committee's report of June 12, or four out of the five additional returns added on June 14 and 15. Yet the committee report of June 12 states that "174 towns have made returns." Over 200 had done so.

³ Someone connected with the Convention, however, took it upon himself, without any formal action of the Convention authorizing it, to make certain corrections in the printed form submitted to the people, before its publication.

It remained only to determine when and how the constitution should go into effect. A resolve fixing the date as October 25, 1780, and arranging for the first election under the constitution was adopted. An engrossed copy was presented to the existing General Court by a committee of five, and 1800 copies printed in broadside form for distribution throughout the State. On the afternoon of June 16, 1780, after votes of thanks had been tendered President Bowdoin, Secretary Barrett, and the Brattle Street Society, the Convention closed with thanksgiving and prayer.

The writer is aware that at this late date, 137 years after the Convention of 1780, he who brings a charge of dishonesty against the "blessed deliberations of that venerable body" stands on uncertain ground. No such charge, so far as I know, was preferred against it at that time; even by those who, in their bitterness at certain provisions of the constitution, wished to overthrow it; even by the so-called rebels who followed Daniel Shays. The tabulation was done in full view of the Convention, which must have contained many members hostile to certain articles. Yet in view of the methods pursued by the "committee to revise and arrange the returns," in view of the actual returns themselves, it is difficult to avoid the conclusion that there was not a two-thirds majority for at least two articles of the constitution, and that the Convention deliberately juggled the returns in order to make it appear that there was.

The only explanation and excuse I can offer for such a procedure on the part of so respectable a body of men is the imperious necessity that existed for the speedy adoption of constitutional government. Over four years had elapsed since the machinery for securing a new constitution had first been put in motion. The serious situation of the Commonwealth in

In the Archives, CCLXXVI. f. 43, is a copy of the edition distributed to the towns, on the margin of which the town of South Brimfield made its returns. The South Brimfield matter has been erased, and marginal corrections made, all of which are incorporated in the "Revised and Corrected Edition" of the constitution issued in 1780, after the ratification. The changes were confined to corrections of spelling, except that in Article xv of the Declaration of Rights, "Trial by a jury," the "a" has been deleted; and in Chapter VI, Article II, the clause "within this state" is shifted from between "officers" and "viz." to its present position. Cf. the literal copy of the official ms. of the constitution, to be shortly printed for the use of the Convention of 1917.

the spring of 1780, in its political, military, and financial affairs, has already been described. The ship of state was drifting toward dangerous rocks. Only an efficient government, resting on a constitution that appeared to have popular sanction, could secure obedience to the law, a regular collection of taxes, and an honorable participation by Massachusetts in the war she had done so much to create. "Never was a good constitution more needed than at this juncture," wrote Samuel Adams on July 10.¹ Every article received at least a bare majority. No practical politician would cavil at the change of a few thousand votes to make it a two-thirds majority in such a crisis. That the Convention accomplished much good by a little wrong, few students of the Revolution will deny; but its action is one more illustration of the fact that right and wrong in history are not the same as legality and illegality.

The real significance of the struggle over the adoption of the constitution of Massachusetts lies in the conflict of opinion, and the victory of property over democracy that its adoption implied.

Professor Andrew C. McLaughlin, in his presidential address before the American Historical Association in 1914, said: "If I were called upon to select a single fact or enterprise which more nearly than any other single thing embraced the significance of the American Revolution, I should select — not Saratoga or the French alliance, or even the Declaration of Independence — I should choose the formation of the Massachusetts Constitution of 1780, and I should do so because that constitution rested upon the fully developed convention, the greatest institution of government which America has produced, the institution which answered, in itself, the problem of how men could make governments of their own free will . . ." ² One might add, "And also because the plain people of the state, in town meeting assembled, were able to point out the principal flaws that time and experience would find in the constitution drafted by John Adams, and adopted by a Convention that included among its members Samuel Adams, James Bowdoin, Theophilus Parsons, John Lowell, George Cabot, and Robert Treat Paine."

¹ W. V. Wells, *Samuel Adams*, III. 103.

² *American Historical Review*, XX. 264.

State of Massachusetts-Bay.

In CONVENTION, June 16, 1780.

WHEREAS, upon due Examination of the Returns made by the several Towns and Plantations within this State, it appears that more than Two-thirds of the Inhabitants thereof, who have voted on the same have expressed their Approbation of the Form of Government agreed upon by this Convention, and laid before them for their Consideration, in Conformity to a Resolve of the said Convention of the Second Day of March last: **THIS CONVENTION** do hereupon declare the said Form to be **THE CONSTITUTION OF GOVERNMENT** established by and for the Inhabitants of the State of *Massachusetts-Bay*.

And as the said Inhabitants have authorized and empowered this Convention to agree upon a Time when the same shall take Place: In Order that the good People of this State may have the Benefit thereof as soon as conveniently may be,

It is Resolved, That the said Constitution or Frame of Government shall take Place on the last Wednesday in *October* next, and not before, for any Purpose, save only for that of making Elections agreeable to this Resolution.

And the first General Court under the same shall be holden on the said last Wednesday in *October*, at the State-House in *Boston*, at Ten o'Clock in the Forenoon—And in Order thereto, there shall be a Meeting of the Inhabitants of each Town and Plantation in the several Counties within this State, legally warned and held, on the first Monday in *September* next, for the Purpose of electing a Governor, Lieutenant-Governor, and Officers for Counsellors and Judges. And there shall also be a Meeting of the Inhabitants of the several Towns within this State, duly warned and held, sometime in *October* next, and ten Days at the least before the last Wednesday in the same Month, for the Purpose of choosing Representatives to serve in the said General Court. And the Selectmen are hereby enjoined to call such Meetings, and to preside at the same. And in all Elections, and in making, receiving and examining Returns, and in conducting the whole Business of organizing and establishing the said General Court, the same Rules are to be observed that are prescribed in the Form of Government for making such Elections, and for the constituting the first General Court; saving only the Difference of Times.

And it is further Resolved, That **SAMUEL BARRETT**, Esq; (Secretary to this Convention) do, on or before the Fifteenth Day of *July* next, cause printed Copies of this Resolution to be sent to the Selectmen of the several Towns, and the Assessors of the several Plantations aforesaid; who are respectively to perform the Duties required by this Resolution, and to make seasonable and regular Returns of the Persons elected to the several Offices herein mentioned; into the Secretary's Office of this State, agreeably to the Rules contained in the Form of Government above referred to.

In the Name, and pursuant to a Resolution of the Convention,

JAMES BOWDOIN, President.

Attest.

SAMUEL BARRETT, Sec'y.

[N. B. The Selectmen and Assessors, in the several Towns and Plantations to whom the above Copies shall be directed, are desired to deliver One to each of their Delegates in the late Convention.]

APPENDIX.

RETURN OF THE TOWN OF BOXFORD, MASSACHUSETTS, ON THE
CONSTITUTION OF 1780.¹

At a Town Meeting held at the Meeting-House in the first Parish in Boxford May 16: 1780. Maj^r Perley Representative

Maj^r Asa Perley chosen Moderator

Voted to choose a Committee to take under Consideration the form of Government sent out for the approbation of of the People and to report such Remarks and amendments as to them may appear proper.

Voted that Cap^t Jonathan Foster Cap^t Isaac Adams Cap^t John Robinson D^r William Hale and Thomas Perley Jun^r be a Committee for the above Purpose.

Then the Meeting was adjourned to the 30th Day of May Instant two O Clock afternoon.

May 30th the Town met according to Adjournment the Moderator being absent Cap^t Jonathan Foster was chosen in his Room.

The Committee appointed to consider of the Constitution made their Report as follows.

Boxford May 30: 1780

The Committee appointed to Inspect the Constitution beg leave to inform the Town that as far as we are able according to the Time We have had have endeavoured to Investigate the Constitution and point out the Errors and Shall lay before the Town our Objections and Remarks thereon

1st Objection as to the third Article in the Declaration of Rights is rather Obscure and ambiguous we therefore want some further explanation on said Article before we can accept it.

2nd Objection We object against the free Men of any Town or Plantation being excluded from giving their Votes for the choice of a Representative, while they are subjected to pay their Proportion of State Taxes

¹ Copy from Town Records.

3rd The House of Representatives being intended as the Representative of the People we object against any Free Inhabitant 21 years of age being excluded from giving his Vote in the choice of a Representative

4th We object that the Quorum of the House of Representatives is too small where the House consists of three or four hundred Members and where they are invested with Power to Levie Duties and Excises on all Wares Merchandise and Commodities whatsoever

5th We object the Govenour simply acknowledging himself of the Christian Religion is not sufficient that he ought to declare himself a Protestant.

6th We object against the Legislature being invested with Power to alter the Qualifications of any Officer in the State whatever untill this Constitution shall be Revised

7th Objection fifteen years we think too long for this Constitution to stand we think eight years is long enough for the Constitution to stand.

1st Remark or addition that Settled Ministers of the Gospel shall not have a Right to a Seat in the Council Senate or House of Representatives.

2nd Remark that the House of Representatives shall at least once a month lay before their Constituents the several Votes that may be determined by yeas and Naies in said House that the People may be able to Judge who is Friends to their Country and who is not.

3 Remark that the Towns may have Authoety to recall their Representatives at any time when they shall act anything Inamical to the Liberties of this Common Wealth and to choose others to succeed them.

4th Remark that the House of Representatives be subjected to a Trial by Jury for any faillure of their Promises to the People of this Common Wealth.

By order of the Committee Jonathan Foster

After some debate upon the Constitution and Committees Report, the Town proceeded to act on other parts of the Warrant.

Then the Meeting was adjourned to Monday the 5th Day of June next two O Clock in the afternoon

Monday 5th of June 1780 the Town met according to adjournment proceeded to act upon the Constitution — the numbers Voting for

and against each Article being taken by Yeas and Nays are as Follows:

PART THE FIRST			PART THE SECOND			CHAPTER I		
Art.	Yeas.	Nays	the fram of			SECTION III		
1	16	—	Government			Art.	Yeas	Nays
2	13	—	<u>Yeas. 19 Nays. —</u>			1	9	
3	3	11				2	—	11
4	22		CHAPTER I			3	12	
5	14		SECTION I			4	4	7
6	18					5	11	
7	22		Article Yeas—Nays			6	5	
8	19	—	1	14		7	9	
9	16		2	15		8	2	1
10	20		3	17		9	—	18
11	21		4	2	14	10	7	
12	22					11	11	
13	21		CHAPTER I.			CHAPTER II.		
14	13		SECTION II.			SECTION I.		
15	11		Art.	Yeas	Nays	Art.	Yeas	Nays
16	22		1	7	1	1	11	
17	20	—	2	4	3	2	—	15
18	21	—	3	5		3	11	
19	27	—	4	7		4	6	
20	18		5	5		5	11	
21	17		6	8		6	8	
22	21	—	7	10		7	10	
23	17	—	8	9		8	5	
24	23	—	9	4		9	5	
25	19	—				10	12	
26	21	—				11	6	
27	21	—				12	7	
28	22	—				13	4	
29	15							
30	14	—						
CHAPTER II.			CHAPTER II.			CHAPTER V.		
SECTION II			SECTION IV.			Art.		
Art.	Yeas	Nays	Art.	Yeas	Nays	1	—	
1	5		1	4		2		
2	5		2	2		3		
3	7					CHAPTER V.		
						SECTION II.		

PART THE FIRST			PART THE SECOND			CHAPTER VI.		
CHAPTER II.			CHAPTER III.					
SECTION III.			Art.	Yeas	Nays	Art.	Yeas	Nays
Art.	Yeas	Nays	1	4		1	—	
1	3		2	5		2	—	—
2	4		3	4		3	—	—
3	4		4	1		4	—	—
4	5		5	1		5	—	—
5	4					6	—	—
6	4		CHAPTER IV.			7	—	—
7	3		Yeas 8. Nays —			8	—	—
						9		
						10	0	11
						11	—	—

The Town accepted the Objections and Remarks reported by the Committee and passed the following Votes thereon

Voted to accept of the third Article in the Declaration of Rights when it is explained with proper Amendments

Voted that the Plantations who pay Publick Taxes and such Towns as may hereafter be incorporated haveing less than one hundred and fifty Rateable Poles ought to be allowed the Priveledge of coupleing themselves together till their Numbers amount to one hundred and fifty Rateable Poles and then have the Liberty of sending a Representative

Voted that two thirds of the House of Representatives and no less ought to constitute a Quorum for doing Business

Voted that the Constitution ought to be revised upon the expiration of five years from the time of its takeing place

Then the Meeting was dissolved

RETURN OF THE TOWN OF GRANVILLE ON ARTICLE III OF THE DECLARATION OF RIGHTS ¹

The Objection to the third Article is as follows. The Article Asserts that the People have a Right to invest their Legislature with a Power to interfere in Matters that properly belong to the Christian Church; after the most mature Consideration we are oblig'd to deny that any such Right is or can be invested in the Legislature; because.

1st Christ himself is the only Lord of Conscience & King & Law Giver in his Church. Teachers of Religion are Officers in his

¹ Mass. Archives, CCLXXVI. f. 49.

Kingdom, qualified & sent by him, for whose Maintenance he hath made sufficient Provision, by the Laws which belong to his own Kingdom. Therefore no supplementary Laws of human Legislatures are necessary.

2nd The interference of the Magistrate in Matters that belong to the Christian Church, is, in our View an Incroachment on the Kingly Office of Jesus Christ, who stands in no need of the help of any civil Legislature whatever; consequently is an Affront to him.

3rd The interference of the Civil Magistrate in Matters that belong to Christ & Conscience, ever has been, and ever will be productive of Oppression to Mankind. There could be no persecution if the civil Magistrate did not support the Power & Cruelty of Men of narrow & ambitious Minds.

4th True Religion has evidently declined & been corrupted by the interference of Statesmen & Politicians. Church History proves this to have been the Case from the Days of Constantine down to our own Day.

RETURN OF WORCESTER, ON THE HOUSE OF REPRESENTATIVES ¹

Chapter 1st Section 3^d House of Representatives

Article 1st 50 for the Article 6. Silent upon the Question.

2^d Rejected Unanimously 57 present — for the following Reasons It is calculated for forming a most unwieldy legislative body. In process of time should the probable degree of population take place the house of Representatives will be so numerous that the dispatch of business will be greatly retarded, & such languor in legislation produced as will, in a great measure, defeat the design of the political existence of the Assembly. For it is well known that Great bodies move slowly. If the proposed mode is established there will be a continued Jealousy in the minds of the people: as a very few of the most populous Towns will have it in their power to constitute a Quorum of the house of Representatives, & being near the State house (should the place of Assembly be & continue in the present Capital of the State) their Members can easily & constantly attend, while those at a distance from their local Situation & many other Causes, be unavoidably absent at the opening or close of a Session whereby in a thin house Laws might be passed which would not be calculated for the General Good.

The following Amendment afterwards passed 24 for 21 against it

That the mode of Representation should be set & established in the

¹ Mass. Archives, CCLXXVII. ff. 71, 120.

Constitution in the same way as Elections in the now State were practised & had according to Law in the year 1774. & that the two last paragraphs in this Article be & remain as proposed by the Honorable Convention with this Alteration viz. That the Members of the house of Representatives receive their pay & expences out of the publick Treasury as well for their Attendance as their Travel, & this because we apprehend that Each Member of said house is the Representative of the whole State & not meerly of the Corporation by which he is elected.

RETURN OF NORTHAMPTON ON THE FRANCHISE.¹

Will any one stand forth and say, that persons who have been born within the state, and have always lived in it, till they have arrived to the age of twenty one years, perhaps much above that age, and who have always paid their poll tax, ever since they were sixteen years old, and are still rateable, and are rated and pay for their polls, the sum set on each poll, in every rate that is made for defraying either the continental State, or town charges, be the same higher or lower; we say, will any one affirm, that such persons are not citizens of the Commonwealth? Is not the consequence then, if the said paragraph is true, that an association of many individuals, of the State, which without consent totally excludes many such adult male persons, from any participation in the appointment of the legislature, is in fact no constitution, and does not make a body politick? yea, is it not absolutely a void business? As to what may be replied, by way of answer in behalf of infants, that is, persons under the age of twenty one years, we ask leave to refer to what Mr Locke has most judiciously said, on that head, in the sixth chapter of the second book of his treatise of Governments, intituled paternal power; which is much too lengthy to be recited on this occasion, but well deserving to be resorted to. And as to the case of women, of whatever age or condition they may be, we ask leave to refer to what is very sensibly, as well as genteelly said on the subject, in the twenty ninth page of the Essex result.

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Dont we know that whenever any mention is made of a tax act, or proposal in the legislature of taxation, it is always spoken of as a tax on polls and estates; that whenever a list is ordered for the purpose of a new valuation, an exact account is directed to be taken of the number of polls above the age of sixteen years in the several towns in this state; and that when the house or their Committee are

¹ Mass. Archives, CCLXXVI. f. 58.

settling a valuation, the first business always is to fix the proportion of a single poll to a thousand pound; and dont we know that the owners of large property, generally, upon such occasions, strive to get the polls share as high as they can; for they are fully sensible, that it is their interest, that the polls share should not be low, for the higher that is, the less will remain on the estates; and they conduct in the cases accordingly. Now do we hear from these poor polls, a single objection, against the persons who are owners of large property, their voting for the members of the house of representatives? they consider that such property-holders have personal interests and concerns as well as the poor day laborer; further, do they object a word against the owners of the property chusing one entire branch of the legislature, exclusive of themselves, to be guardians of such property? they feel and own the force of the argument for property's having great weight in the legislature, because property ever was, and ever will be, the subject of legislation and taxation. But pray Gentlemen, shall not the polls, the persons of the state, have some weight also, who will also always be the subjects of legislation and taxation? Are life, members, and liberty of no value or consideration? Indeed Gentlemen we are shocked at the thought, that the persons of adult men, should, like live stock and dead chattels, be brought to account to augment the capital whereon to draw representatives for particular towns, in the same manner as such chattels are to be brought into the property capitals to augment the number of senators, and when they have been improved and made the most of that may be for that purpose, they should be wholly sunk and discarded not to say like villains but absolutely like brute beasts. Shall these poor adult persons who are always to be taxed as high as our men of property shall prevail to have them set, and their low pittances of day wages, be taken to lighten the burden on property, shall these poor polls who have gone for us into the greatest perils, and undergone infinite fatigues in the present war to rescue us from slavery, and had a great hand, under God, in working out the great salvation in our land, which is, in a great degree wrought out, some of them leaving at home their poor families, to endure the sufferings of hunger and nakedness, shall they now be treated by us like villains and African slaves? God forbid. What have they done to forfeit this right of participating in the choice of one branch of the two branches which are to constitute our legislative, when they are willing that your men of property should enjoy the exclusive right of chusing the first branch? have they forfeited it in the exercise which they have made of this right of participating in the choice of you Gentlemen to your important, very important trust? we hope not, and we hope that you will on further consideration

verify it, that they have not, by giving them a voice in the choice and appointment of that very branch of the legislative, which you yourselves tell us is by you intended, to be the representative of the persons of the Commonwealth, and thereby remove all cause for them to regret their choice of you.

TABLE OF VOTES ON THE CONSTITUTION OF 1780.

All the figures below, save those for Essex County, are compiled from the original returns in the Massachusetts Archives, or from copies of local records furnished by town clerks. The total number voting is obtained from the "number present and voting" at the most numerous meeting held by a town to consider the constitution, where such number is stated in the return. Where it is not, the highest vote of the town on any article of the constitution is used.

In computing the vote on Article III and Chapter VI, Article x, the direct vote taken by a town on that article is used wherever found. When a town voted, not on the original article, but on its own proposed substitute, the affirmative side of such a vote has been added to the negative vote for the article in question; and vice versa. In some cases, however — Boston is an example — the return makes it clear that both *yeas* and *nays* on the town's substitute were opposed to the original article. In such cases, and no others, both sides have been added to the negative column for Article III (or x). Cf. *supra*, p. 399. When a town voted neither on the original article nor on a substitute, but took a vote on the entire constitution, its *yeas* and *nays* on that question are counted for both articles.

It has been found impossible to recover a satisfactory number of the missing returns from Essex County. The figures for the total vote of Essex are obtained from the highest vote for that county listed in specimen county schedule in the *Journal of the Convention*, 176. The figures for Article III are obtained by interpreting this table in the same way as the original returns. The figures for Article x are obtained from such Essex returns as I have been able to reconstitute from the town records.

The table below, then, does not pretend to be absolutely accurate. It is simply the nearest figure we can get for the popular vote from the materials we have.

The map used as the basis of the graphic representation of the vote on Article III is Osgood Carleton's of 1801. Many new townships had been created in the previous twenty years. Dartmouth, for instance, included both New Bedford and Westport

in 1780. The area of a town in 1780 has been followed wherever possible, in indicating its vote of that year.

COUNTIES	Total number voting	Art. III Decl'n Rights		Chap. VI, Art. x	
		Yea	Nay	Yea	Nay
MAINE COUNTIES . . .	453	292	155	230	214
ESSEX	2,115	1,144	971	355	251
MIDDLESEX	2,266	1,617	552	944	725
SUFFOLK	2,318	865	1,003	1,234	512
PLYMOUTH	1,246	637	448	577	447
BARNSTABLE	286	193	52	80	153
BRISTOL	1,486	500	892	482	794
WORCESTER	3,064	1,713	1,162	1,157	999
HAMPSHIRE	2,106	1,423	588	859	907
BERKSHIRE	895	501	402	420	219
Total	16,235	8,885	6,225	6,338	5,221

E. G. PARKER¹ TO C. J. LANMAN.²

[Case of Anthony Burns.]

Boston, Tuesday P.M.

[May 30, 1854.]

MY DEAR SIR, — I have just received the Governor's Commission of Conn. I write this line to thank you, to express my regret at not seeing you, and to say that the Commission will be of essential Service to me; that is if I ever live to get through this terrific and unparalleled siege about the Fugitive Slave. Boston is a Barrack. The Court House is a Camp. In the Court Room daily an armed gang of fighting men surround both of the Counsel, myself and my associate, And of course, we ourselves are armed fully.

I appear in the Case solely *professionally*, and without the slightest sympathy for the Fugitive Slave Law, which I hate, but shall support it so long as it is Law.

If I supposed it would be thought by you of sufficient consequence, what my position was, in this strange Drama, so likely to be

¹ Edward Griffin Parker (1826-1868) served as captain on the staff of General Butler, and resigned his commission in 1864. He was a junior counsel for the claimant in the Burns case.

² From the collection of Grenville H. Norcross.

twice a Tragedy, I would send you the Daily Advertiser of today, which very clearly defines and defends my relation and attitude in the Case. But I know how entirely unimportant to you, it would seem, and therefore merely again presenting my acknowledgments for your kindness in attending to the Commission, I remain Yr. very humble Serv^t.

EDW. G. PARKER.

P.S. Remember me to the Family if you please.

[ENDORSEMENT.]

MY DEAR SIR, — I enclose a letter from Mr. Parker — and I am very much obliged for your kindness. He is a promising young man — and a very worthy fellow. Truly, etc.

C. J. LANMAN.

HON. L. F. S. FOSTER.

J. A. Rockwell in a conversation with Converse remarked “the friends of Mr. Foster managed very adroitly.”

Remarks were made during the meeting by Messrs. GREEN, STORER, WENDELL, STANWOOD, BOWDITCH, and LORD.